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No.

In the Supreme Court of the United States

OCTOBER TERM, 1979

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-83a) is not yet officially reported. The decisions and orders of the National Labor Relations Board (Apps. D and E, *infra*, 90a-109a, 110a-184a) are reported at 231 N.L.R.B. 351 and 236 N.L.R.B. No. 42.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 84a-86a) was entered on September 25, 1979. The Board's petition for rehearing was denied on December 13, 1979 (App. C, *infra*, 87a-88a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board properly concluded that contractual provisions adopted by the union and the employer-organizations to deal with containerization in the shipping industry enlarged, rather than preserved, work opportunities for employees represented by the union, and that such provisions therefore violated Section 8(e) of the National Labor Relations Act and that union action to enforce them violated Section 8(b)(4)(B) of the Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (29 U.S.C. 151 *et seq.*) are as follows:

1. Section 8(b), 29 U.S.C. 158(b), provides in pertinent part:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> 4(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where * * * an object thereof is:
>
> * * * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other pro-

> ducer, processor, or manufacturer, or to cease doing business with any other person * * * *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful * * * any primary strike, or primary picketing; * * *

2. Section 8(e), 29 U.S.C. 158(e), provides in pertinent part:

> It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void * * *

STATEMENT

A. The Board's Findings of Fact [1]

1. *The Port of New York (the "Dolphin" Case)*

New York Shipping Association (NYSA) is an association of employers, including steamship and stevedoring companies, whose operations involve ocean transportation of cargo and passengers into and out

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[1] Two separate Board proceedings, *International Longshoremen's Association, et al. (Associated Transport, Inc.)*, 231 N.L.R.B. 351 (1977), and *International Longshoremen's Association and New York Shipping Association, Inc. (Dolphin Forwarding, Inc.)*, 236 N.L.R.B. No. 42 (1978), were consolidated for argument and decision by the court of appeals. *Dolphin Forwarding* involves the Port of New York; *Associated Transport* involves the Ports of Baltimore, Maryland, and Hampton Roads, Virginia. The facts of each case are described separately herein.

of the Port of New York (App., *infra*, 92a). It conducts collective-bargaining negotiations and enters into agreements on behalf of its members with the International Longshoremen's Association (ILA) (App., *infra*, 93a). Since 1970, the Council of North Atlantic Shipping Associations (CONASA), a multi-employer bargaining association representing constituent shipping associations, including NYSA, has bargained with ILA on a master-contract basis over terms and conditions of employment for longshoremen employed by NYSA members (App., *infra*, 138a).

Before World War II most solid cargo moving over the New York docks was handled on a piece-by-piece basis by longshoremen represented by ILA. Truckers delivered loose cargo to the pier and removed it from their vehicles, and longshoremen then placed the cargo on drafts or pallets, or into small boxes, before loading it aboard ship. Cargo from incoming ships was broken down by longshoremen and picked up at the pier by truckers for delivery to the ultimate consignee. In the late 1940's, the practice began of loading ("stuffing") loose cargo into large wooden boxes and metal containers for shipment to and from Puerto Rico. Incoming cargo was removed ("stripped") from these containers prior to delivery to the recipient. See *International Longshoremen's Association, AFL-CIO* (*Consolidated Express, Inc.*), 221 N.L.R.B. 956, 967-968 (1975) (hereafter *Conex*).

Consolidators, employing laborers not represented by ILA, traditionally had solicited, received and consolidated miscellaneous small shipments of goods for their own customers and had transported that loose

cargo from their off-pier facilities to the docks. With the advent of containerization, they began to stuff such goods, known as less-than-container-load (LCL) cargo,[2] into containers at their off-pier facilities for their own customers and to transport the containers to the docks for loading aboard ship by longshoremen. The consolidators also began to pick up LCL containers unopened at the docks on inbound shipments and to strip them at their off-pier facilities prior to delivery of the cargo to their customers. (App., *infra*, 93a.)

During the same period, longshoremen represented by ILA loaded containers holding LCL cargo into, and unloaded them from, ships. They did so, however, only with respect to cargo sent directly to the pier in loose or bulk form by the steamship lines' customers, as opposed to cargo sent to the consolidators or freight forwarders for transshipment. *Conex*, *supra*, 221 N.L.R.B. at 959.

Dolphin Forwarding, Inc. (Dolphin) and San Juan Freight Forwarders, Inc. (San Juan) are consolidators with off-pier facilities within a 50-mile radius of the Port of New York, who solicited business from customers planning to ship LCL or LTL cargo between the Port of New York and Puerto Rico (App., *infra*, 93a). Customers doing business with these companies transported their goods to off-pier facilities

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[2] LCL cargo or LTL (less-than-trailer-load) cargo consists of individual shipments to two or more consignees that is transported in a single container. A full-shipper's-load (FSL), by contrast, is a single container of cargo sent from one shipper to one beneficial owner consignee. (App., *infra*, 140a, 120a.)

where the consolidators, using non-ILA labor, consolidated the goods with those of other customers and stuffed them into containers provided by NYSA-member steamship companies. The off-pier consolidators then transported the filled containers to the dockside facilities of the steamship companies. There, employees of the steamship companies (longshoremen represented by the ILA) loaded the containers onto specialized or "containerized" vessels [3] for shipment to Puerto Rico (App., *infra*, 93a).

In 1959, the ILA and NYSA negotiated a collective-bargaining agreement that expressly recognized the right of NYSA members to handle containers of any size or kind without restriction on stripping and restuffing by ILA labor at the pier. In turn, NYSA agreed to contribute to a jointly-administered fund certain royalty payments on consolidators' containers stuffed or stripped away from the pier by non-ILA labor. *Conex, supra*, 221 N.L.R.B. at 960, 968-969.

In 1967, ILA demanded during collective-bargaining negotiations with NYSA that longshoremen stuff and strip *all* containers crossing the New York docks. In February 1969, after a lengthy strike, detailed provisions governing containerization—the "Rules on Containers"—were agreed upon, and since then have appeared, as modified, in every NYSA-ILA contract, and later in every CONASA-ILA contract. The Rules on Containers established a system under which ILA-

[3] These ships are designed to carry 20- and 40-foot metal containers, holding all types of freight, which can be affixed to a truck chassis and transported unopened from the dock to their destination. *Conex, supra*, 221 N.L.R.B. at 968.

represented longshoremen were to strip and restuff all LCL cargo in containers owned or leased by NYSA members and originating within 50 miles of the Port of New York—even if the containers already had been stuffed off the pier by consolidators and thus were ready for immediate loading aboard a containership. If the steamship line failed to have its longshoremen perform such work, the line was required to pay liquidated damages into the Container Royalty Fund (App., *infra*, 93a-94a.) In January 1973, ILA and CONASA executed the "Dublin Supplement" to the Rules, which, among other things, sought to prevent evasion of the Rules by forbidding steamship lines to supply empty containers to consolidators who sought to conduct business as they had in the past (App., *infra*, 94a), and see *Conex, supra*, 221 N.L.R.B. at 969-970.

Beginning on August 24, 1974, and continuing through January 23, 1975, the NYSA-ILA Container Committee assessed liquidated damages and fines totalling approximately $47,000 against NYSA members Transamerican Trailer Transport, Inc. (TTT) and Maritime Transportation Management, Inc. (MTM). These fines were levied because the steamship companies provided containers to Dolphin and San Juan, whose consolidation and forwarding operations failed to comply with the Rules. In consequence, TTT and MTM informed the consolidators that they would no longer furnish them containers or space aboard their vessels, and thereafter TTT and

MTM ceased doing business with Dolphin and San Juan (App., *infra*, 94a.)

2. *The Ports of Baltimore and Hampton Roads (the "Associated Transport" case)*

Houff Transport, Inc. (Houff) and Associated Transport, Inc. (Associated) transport cargo by truck from the Baltimore and Hampton Roads ports. Houff, a non-union business, has operated truck terminals in Baltimore and Norfolk, Virginia, since 1946 and 1952, respectively. Associated, whose terminal employees and truck drivers are represented by the Teamsters Union, has operated a terminal in Virginia Beach since at least the 1960's (App., *infra*, 137a).

Prior to the advent of containerization, Houff and Associated picked up loose import cargo at the piers in Baltimore and Hampton Roads and hauled it in their own trucks, at their customers' direction, to the ultimate consignee (App., *infra*, 140a). Fully containerized ships first appeared in those ports in 1965. During the ensuing decade, a greatly increased amount of import cargo passing over those docks was shipped in containers (App., *infra*, 120a-121a).

Since the mid-1960's, truckmen in Baltimore and Hampton Roads, such as Associated and Houff, routinely picked up at the piers unopened containers holding full shipper's loads (FSL)—that is, cargo destined to a single consignee who also is the beneficial owner of the cargo, which has been transported in a single container (App., *infra*, 121a).[4] After

[4] ILA-represented longshoremen stripped FSL containers at the pier, but only when requested by the consignee (App., *infra*, 121a). They also stripped LTL cargo and placed it loose on the pier for pick up by truckmen (App., *infra*, 120a).

hauling the sealed FSL containers to their off-pier freight terminals, truckmen either left the FSL intact for subsequent delivery to the consignee in the original container, or their own employees stripped the cargo from the container and stuffed it into one of the carriers' trucks, which then was driven to the ultimate consignee (App., *infra*, 164a).[5]

The Rules on Containers were first incorporated into the collective bargaining agreements between the ILA and the Steamship Trade Association of Baltimore, Inc. (STA) and the Hampton Roads Shipping Association (HRSA) in 1968. The Rules, however, applied only to LTL and similar cargo consisting of

[5] Associated and Houff, for a number of years, routinely stripped FSL containers at their terminals with their own employees and stuffed that cargo into their own vehicles (App., *infra*, 164a). For example, if Associated had two 20-foot containers destined for the same consignee, it would stuff the contents of both containers into one of its 45-foot trucks rather than haul the containers separately with two of its tractors. This practice reduces the truckman's direct labor cost and such variable expenses as gasoline and oil. It also is economical f r the truckman to strip the container and return it promptly since he pays a daily rental fee to the steamship line for the use of its container. In other instances the cargo must be stripped and transported in the truckmen's own vehicle because the unstripped container is too heavy to meet state highway and bridge weight restrictions. The cargo also may be stripped at the truckman's terminal if the container load is improperly balanced or the terrain of the route to the consignee is too hazardous for the hauling of a container. (J.A. 126a-131a, 196a-198a) ("J.A." references are to the joint appendix in the *Associated Transport* case in the court of appeals).

shipments destined for more than one shipper.[6] There were no provisions in the Rules requiring the stripping of FSL cargo by ILA labor at the pier until 1974. (App., *infra*, 140a, 143a.)[7]

Since 1974, the Rules have provided that ILA labor shall strip all FSL containers that otherwise would be stripped "by other than [the consignee's] own employees" within 50 miles of the ports (App., *infra*, 148a). The new Rules also provided that all FSL cargo consigned to the beneficial owner's place of business, or warehoused for at least 30 days within the port area, need not be stripped by ILA labor, but that a royalty would be paid to the Container Royalty Fund for each such container not handled by longshoremen (App., *infra*, 148a). The effect of these new Rules, as clarified,[8] is that whenever a truckman

[6] Such cargo is sometimes referred to as CFCL (consolidated full consumer load) cargo.

[7] However, a practice had existed since 1969 in Baltimore and Hampton Roads whereby longshoremen at the dock stripped FSL containers whose cargo was consigned to a warehouse located within 50 miles of the ports. Prior to 1969, truckmen in those ports routinely had hauled unstripped FSL containers to nearby warehouses, where warehouse employees stripped them and stored the cargo. (App., *infra*, 145a). In January 1973, a Container Committee, composed of ILA and CONASA representatives, issued an interpretation of the Rules—the so-called Dublin Supplement—which permitted truckmen to resume hauling FSL cargo directly to a port area warehouse for unstripping provided that the freight was stored there at least 30 days (App., *infra*, 145a-147a).

[8] In 1975, after a suspension of the Rules by the ILA, the Rules were clarified to preclude storage of cargo in warehouses within 50 miles of the ports (App., *infra*, 158a-161a).

strips an FSL container at an off-pier terminal, located within 50 miles of the ports, with his own employees prior to delivery of the FSL cargo to the beneficial owner's place of business—a practice called "shortstopping"—the shipping line which owns that container becomes liable for liquidated damages of $1000 (App., *infra*, 148a).

After the new Rules became effective, Houff's employees at its Baltimore area truck terminal, located within 50 miles of the port, stripped containers picked up from United States Lines (USL) and Lavino Shipping Company (Lavino) and stuffed the contents into Houff trucks for transport to its customers in West Virginia.[9] When ILA learned of this off-pier stripping and stuffing, it brought charges against USL and Lavino, claiming violations of the Rules on Containers. (App., *infra*, 154a.) USL was assessed liquidated damages of $2000, and Lavino was assessed damages of $1000 (App., *infra*, 154a). USL and Lavino paid their fines and demanded indemnification from Houff; when Houff refused to reimburse them, they cancelled their Equipment Interchange Agreement[10] with Houff (App., *infra*, 154a-155a).

[9] Houff had determined that the containers were overloaded and unsafe, and that their rental was a needless expense (App., *infra*, 154a).

[10] Where, as here, the shipping lines own the containers, a motor carrier cannot obtain custody of containers to transport its cargo unless an Equipment Interchange Agreement is in effect between the carrier and the shipping line which is responsible for the cargo's ocean transportation. Such agreements set forth the rights and obligations of the lessee-

Since the cancellation of those agreements, USL and Lavino have refused to release containers to Houff, and Houff has lost business because its customers have had to reassign the hauling of their cargo to motor carriers with USL and Lavino interchange agreements (App., *infra*, 155a).

Fines were also levied against USL because of Associated's stripping and stuffing of containers under similar circumstances. This led to the cancellation of USL's interchange agreement with Associated, and to a consequent loss of business for Associated. (App., *infra*, 155a-157a.)

B. The Board's Decisions and Orders

Based on these facts, the Board found that traditionally the off-pier stuffing and stripping of containers was performed by consolidating companies and truckmen, and not by longshoremen. Accordingly, the Rules on Containers, insofar as they applied to such off-pier stuffing and stripping, had a secondary objective proscribed by Section 8(e) of the Act, and the ILA's efforts to enforce the Rules violated Section 8(b)(4)(B) of the Act. The Board followed its decision in the *Conex* case,[11] which involved the application of the Rules on Containers to similar work (App., *infra*, 94a-95a, 115a-117a). In *Conex*, the Board concluded that:

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truckman when he has custody of the lessor-shipping line's container and establish the per diem charge paid by the truckman for use of the container. (App., *infra*, 149a-151a.)

[11] *International Longshoremen's Association (Consolidated Express, Inc.)*, 221 N.L.R.B. 956 (1975), enf'd 537 F.2d 706 (2nd Cir. 1976), cert. denied, 429 U.S. 1041 (1977).

The traditional work of the longshoremen represented by ILA has been to load and unload ships. When necessary to perform their loading and unloading work, longshoremen have been required to stuff and strip containers on the piers.

Similarly, for many years, maritime cargo has been sorted and consolidated off the docks by companies employing teamsters and unrepresented employees. With the advent of vessels designed exclusively to carry the large containers presently in use, these consolidating companies, such as Consolidated and Twin, have continued to consolidate shipments into containers prior to their placement aboard the vessels. The consolidators generate such work themselves, performing it not on behalf of the employer-members of NYSA but for their own customers who have goods to ship. Furthermore, they perform this consolidation work at their own off-pier premises, with their own employees who are outside the unit represented by ILA, and who fall within the coverage of separate collective-bargaining agreements, under which they are represented by other labor organizations. It is clear, therefore, that Consolidated and Twin have traditionally been engaged in the work of stuffing and stripping containers such as are here in controversy.

From the foregoing and the record as a whole, it is clear that the on-pier stripping and stuffing work performed by longshoremen as an incident of loading and unloading ships does not embrace the work traditionally performed by Consolidated and Twin at their own off-pier premises. It does not fall within ILA's traditional role to engage in make-work measures by insisting upon strip-

> ping and stuffing cargo merely because that cargo was originally containerized by nonunit personnel. Yet, ILA's demands here could only be met if the work traditionally performed off the pier by employees outside the longshoremen unit were taken over and performed at the pier by longshoremen represented by ILA. [221 NLRB at 959-960; footnote omitted.]

The Board, *inter alia*, ordered the ILA and the Associations to cease giving effect to and enforcing the Rules on Containers to the extent that they had been found to be unlawful (App., *infra*, 98a, 99a-100a, 117a-118a).

C. The Decision of the Court of Appeals

A divided panel of the court of appeals refused to sustain the Board's conclusion that the Rules on Containers, and ILA action to enforce them, sought to enlarge the work opportunities for ILA bargaining units rather than merely to preserve work traditionally performed by employees in those units. The court held that "the Board erred as a matter of law by ignoring traditional work patterns when defining the work in controversy" (App., *infra*, 51a; footnote omitted). The court explained that "[l]ongshoremen have historically loaded and unloaded ocean-borne cargo, which not only has meant loading the cargo into and out of the hold of the ship, but also has meant sorting the cargo and loading it on to equipment such as pallets"; from "the longshoremen's standpoint, therefore, containerization merely represents a change in equipment." Moreover, "the very nature of containers belies any notion that they present work distinctly different from and unrelated to traditional longshoremen's work." (App., *infra*, 48a-49a; footnotes omitted.)

The full court, with four judges dissenting, denied the Board's petition for rehearing *en banc* (App., *infra*, 87a-88a).

REASONS FOR GRANTING THE WRIT

1. The decision of the court of appeals in these cases is in direct conflict with the decision of the Second Circuit in *International Longshoremen's Association* v. *NLRB*, 537 F.2d 706 (1976), cert. denied, 429 U.S. 1041 (1977), enforcing the Board's order in *Conex, supra.* See also *International Longshoremen's Association Local 1575* v. *NLRB*, 560 F.2d 439 (1st Cir. 1977); *Humphrey* v. *International Longshoremen's Association*, 548 F.2d 494 (4th Cir. 1977). The *Conex* case involved the application of the Rules on Containers to the identical off-pier stuffing and stripping of LCL cargo performed by consolidators in the Port of New York involved in the *Dolphin* case here. The Second Circuit, contrary to the view of the District of Columbia Circuit, agreed with the Board that the traditional work of longshoremen does not include such off-pier stuffing and stripping of cargo, and that, because the Rules on Containers sought to acquire such work for longshoremen, they had a secondary objective proscribed by Section 8(e) of the Act (537 F.2d at 711-712). Moreover, while *Conex* did not pass on the off-pier shortstopping work performed by truckers in the Baltimore and Hampton Roads ports, which is involved in the *Associated Transport* case here, the District of Columbia Circuit employed the

same legal principle used with respect to the off-pier work in the Port of New York in rejecting the Board's finding that such shortstopping was not traditional longshoremen's work (App., *infra*, 45a-52a).[12]

It is important not only to the parties but also to the nation that this conflict between the circuits be promptly resolved by this Court. Insofar as the Port of New York is concerned, the parties are confronted with diametrically opposite decisions—the order enforced by the Second Circuit precludes the application of the Rules on Containers to off-pier stripping and stuffing work, whereas the decision of the District of Columbia Circuit would permit their application to to such work. Moreover, while the decision of the District of Columbia Circuit would permit the application of the Rules on Containers to off-pier stripping and stuffing work in the Baltimore and Hampton Roads ports, there is reason to believe that the Fourth Circuit would reach a different conclusion if a proceeding were brought in that circuit (see note 13, *supra*).[13] Negotiations for a new collective agreement

[12] In *Humphrey* v. *International Longshoremen's Association, supra,* the Fourth Circuit found that the Board's Regional Director had reasonable cause to believe that the application of the Rules on Containers in the Hampton Roads port was violative of the Act because the off-pier work of stripping and stuffing containers was not traditional longshoremen's work. It accordingly reversed the district court's refusal to issue a temporary injunction pursuant to Section 10(*l*) of the Act, 29 U.S.C. 160(*l*).

[13] Indeed, a proceeding raising that question is now pending there. *International Longshoremen's Association, et al.* v. *NLRB,* No. 79-1672 (C.A. 4), petition to review 245 N.L.R.B. No. 172 (1979).

covering east and gulf coast ports are scheduled to take place in the spring of 1980. Unless the uncertainty as to the validity of the Rules on Containers created by the conflicting courts of appeals decisions is speedily resolved, there is great danger that these negotiations will, as they have in the past, result in industrial strife over the containerization question.[14]

2. The Board submits that under proper application of the principles enunciated by this Court in *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612 (1967), and *NLRB* v. *Enterprise Association of Pipefitters*, 429 U.S. 507 (1977), the court below should have enforced the Board's orders in the present cases.

a. In *National Woodwork*, the Court held that whether an agreement restricting business relations between two persons violates Section 8(e) of the Act depends upon "whether, under all the surrounding circumstances, the Union's objective was preservation of work for [the unit] employees, or whether the agreements * * * were tactically calculated to satisfy union objectives elsewhere" (386 U.S. at 644; footnote

[14] See the Reply Memorandum filed in this Court by the petitioners in *International Longshoremen's Association* v. *Consolidated Express, Inc.*, Nos. 78-1902, *etc.*, p. 5. That case involves an antitrust suit based on the application of the Rules on Containers to consolidators in the Port of New York. The United States, as *amicus curiae,* has filed a memorandum urging that the petition be denied because the antitrust issues would be affected by the validity of the Board's position on whether the Rules violate Section 8(e) of the NLRA, a question that could be resolved by the Court in the present cases if certiorari is granted.

omitted). If the agreement has the former objective, it is primary and lawful; if it has the latter objective, it is secondary and unlawful. Unions and employers lawfully may agree that work normally performed or "fairly claimable" by employees in the bargaining unit will be performed only by unit members; such provisions have the valid, primary purpose of protecting the jobs of the employees in that unit. *Meat and Highway Drivers, Local 710* v. *NLRB*, 335 F.2d 709, 713 (D.C. Cir. 1964). On the other hand, they may not agree to acquire for the employees of the primary employer work that is " 'neither unit work nor fairly claimable as unit work'." *Sheet Metal Workers, Local 223* v. *NLRB*, 498 F.2d 687, 696 (D.C. Cir. 1974). Such agreements are unlawful because they reach beyond the primary bargaining unit to acquire work historically performed by employees of another employer in another bargaining unit.[15]

The question whether an agreement merely preserves "traditional" or "fairly claimable" work for employees in the bargaining unit, or seeks to acquire work historically performed by employees of another employer in another bargaining unit, is to be determined by the Board in the first instance. The Board may consider such factors as "the remoteness of the threat of displacement by the banned product or serv-

[15] See *National Woodwork, supra*, 386 U.S. at 648 (Harlan, J., concurring): "[this is] not a case of a union seeking to restrict by contract or boycott an employer with respect to the products he uses, for the purpose of acquiring for its members work that had not previously been theirs."

ices, the history of labor relations between the union and the employers who would be boycotted, * * * the economic personality of the industry" (*National Woodwork, supra*, 386 U.S. at 644 n.38), and whether the union seeks "to obtain work that the employer has no power to assign." *Pipefitters, supra*, 429 U.S. at 521.

b. Based on the facts set forth above, the Board concluded that the traditional on-pier work of longshoremen has not included the work performed by employees of truckers and consolidators—that is, FSL cargo shortstopping and LCL cargo stuffing and stripping for the customers of truckers and consolidators. Rather, longshoremen traditionally performed stuffing and stripping work only for customers of the steamship companies who sent their cargo in loose form directly to the docks. Therefore, insofar as the Rules on Containers were designed to obtain for longshoremen work that had traditionally been performed by the consolidators and truckers, the Rules and their enforcement by ILA had a secondary objective proscribed by Section 8(e) and Section 8(b)(4)(B) of the Act.

The court below held that "the Board erred as a matter of law by ignoring traditional work patterns when defining the work in controversy" (App., *infra*, 51a; footnote omitted).[16] However, in so concluding, the

[16] The Court added that it "has no dispute with the Board's factual findings. Rather, our conflict with the NLRB is exclusively focused on the Board's misinterpretation and misapplication of the prevailing law—the doctrine of work preservation" (App., *infra*, 59a).

court, not the Board, ignored the teaching of *National Woodwork* and failed to consider "all the surrounding circumstances," including "the economic personality of the industry" (386 U.S. at 644 & n.38). Thus, the court focused primarily upon the skills involved in cargo handling (App., *infra*, 48a-50a). The Board, on the other hand, found that, notwithstanding the similarity of skills involved, there were *two distinct stuffing and stripping markets*: one for the convenience of steamship companies that must consolidate loose cargo sent to them by shippers, and one for the convenience of shippers who consolidate their cargo in other ways.

The Board could reasonably conclude that, since ILA workers traditionally have performed the stuffing and stripping required for the convenience of customers of shipping lines but have not traditionally performed the stuffing and stripping performed by truckers and consolidators for their own shipper-customers, enforcement of the Rules on Containers with respect to the latter was intended to acquire "'neither unit work nor fairly claimable * * * unit work.'" *Sheet Metal Workers Local 223* v. *NLRB*, *supra*, 498 F.2d at 696. Plainly, "the Board may assign to the presence [of the two distinct markets] much more weight then would the Court of Appeals, but this far from demonstrates a departure from the totality-of-the-circumstances test recognized in *Na-*

tional Woodwork." *Pipefitters*, *supra*, 429 U.S. at 524; footnote omitted.[17]

c. The court of appeals' conclusion that the Board's "posture in the cases * * * is not supported by rational application of the right to control test" because the steamship lines—the longshoremen's employers—"controlled the disposition of all the containers at issue" (App., *infra*, 56a), is also too narrow in its

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[17] Nor is the foregoing analysis inconsistent with *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249 (1977), or any other case under the Longshoremen's and Harbor Workers' Compensation Act, ch. 509, 44 Stat. 1424, 33 U.S.C. 901 *et seq.* *Northeast Marine* holds that stuffing and stripping operations, at least when conducted by longshoremen who spend part of their time loading and unloading vessels, are of such a maritime character that they satisfy the "status" test for compensation established by 33 U.S.C. 902(3). But, as we have indicated above, the fact that longshoremen traditionally have performed some stuffing and stripping does not mean that they traditionally have performed *all* stuffing and stripping. Respondents cannot prevail in this case unless they can establish that they have a claim to all such operations, whereas the claimants in the compensation cases prevailed on a showing that some stuffing and stripping operations are so related to maritime commerce that the Longshoremen's Act applies. See also *P. C. Pfeiffer Co.* v. *Diverson Ford*, No. 78-425 (Nov. 27, 1979) (employees engaged in fastening vehicles onto railroad flat cars near the pier and in unloading cotton from a dray wagon into a pier warehouse are engaged in "maritime employment" within the meaning of 33 U.S.C. 902(3)). Moreover, the issue under the Longshoremen's Act —relationship to maritime commerce—has no similarity to the question presented in this case, which is whether one employee unit rather than another has a traditional claim to perform particular work. It would make no difference under the Longshoremen's Act whether the ILA-represented unit or some other unit traditionally performed the stuffing and stripping work in question.

focus. The steamship companies could not designate the shippers whom the cargo owners might chose to transport their goods to the docks, and could not control how those truckers or consolidators brought their customers' goods to the docks or whether the truckers or consolidators used their own employees to rehandle the cargo. Refusal to supply containers was only a means chosen by the parties to the Rules on Containers to enforce them and, as such, was an inherent element in the secondary boycott itself; it did not evidence "control" over the work in controversy.

Finally, the fact that the Rules on Containers may "represent a reasoned response to the difficult problem of technological innovation" (App., *infra*, 60a) is irrelevant, if, as we submit, the Board correctly found that the Rules and their enforcement violate the secondary boycott provisions of the Act. The parties by agreement cannot immunize conduct that is proscribed by statute. Indeed, Section 8(e) was added to the Act in 1959 to close a "loophole" in the Act whereby voluntary execution and enforcement of contractual provisions requiring participation in secondary boycotts had been permitted. *National Woodwork, supra*, 386 U.S. at 634; see also *Pipefitters, supra*, 429 U.S. at 517.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfuly submitted.

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JANUARY 1980

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1735

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 77-1758

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
HOUFF TRANSFER, INC., INTERVENOR

No. 78-1510

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND NEW YORK SHIPPING ASSOCIATION, INC., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petitions to Review and Cross-Applications
to Enforce Orders of the
National Labor Relations Board

Argued January 18, 1979

Decided September 25, 1979

Before WRIGHT, *Chief Judge*, and ROBINSON and ROBB, *Circuit Judges*.

Opinion for the court filed by *Chief Judge* WRIGHT.

Dissenting opinion filed by *Circuit Judge* ROBB.

WRIGHT, *Chief Judge*: The National Labor Relations Board (NLRB) decided in these cases—one arising in the Port of New York,[1] and other in the Ports of Baltimore and Hampton Roads[2]—that petitioners Council of North Atlantic Shipping Associations (CONASA), New York Shipping Association (NYSA), and International Longshoremen's Association (ILA) violated the congressional proscription of secondary boycotts.[3] Petitioners challenge the

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[1] No. 78-1510, reviewing *International Longshoremen's Ass'n*, 98 L.R.R.M. 1276 (1978).

[2] Nos. 77-1735 and 77-1758, reviewing *International Longshoremen's Ass'n*, 231 N.L.R.B. 351 (1977).

[3] The two cases, though strikingly similar and capable of being treated in a single opinion, have presented the court with independent sets of documents: briefs, joint appendices, etc. Because reference to these documents may cause some confusion, this opinion where necessary will identify the document within the appropriate case by provision of a parenthetical abbreviation of the relevant port or ports. For example, the Joint Appendix (JA) for Nos. 77-1735 and 77-1758, arising in Baltimore and Hampton Roads, will be cited as JA (B-HR); that for No. 78-1510, arising in New York, will be cited as JA (NY).

Board's rulings as inconsistent with the Supreme Court's work preservation doctrine, and the Board cross-applies for enforcement of its orders.[4]

The work preservation doctrine provides generally that efforts to preserve work for employees displaced by technological innovation are not unlawful secondary activities and that union-management contracts with the same purpose are not proscribed "hot cargo" agreements. Activities and agreements, however, that seek not to preserve the traditional work of displaced workers but to acquire work of other employees are unlawful under the congressional proscription. The question before us is whether certain rules agreed to by shipping companies and the ILA are an effort by the ILA to acquire work or merely an attempt to preserve its members' traditional responsibilities in the era of containerized shipping.

The NLRB held that petitioners were engaged in work acquisition rather than work preservation. Because we believe this judgment rests on erroneous interpretations of the Supreme Court's decisions in *National Woodwork Manufacturers Ass'n* v. *NLRB*[5] and *NLRB* v. *Enterprise Ass'n of Steam, etc. Pipefitters*,[6] we grant the petitions for review and set

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[4] 29 U.S.C. §§ 160(e), (f) (1976).

[5] 386 U.S. 612 (1967).

[6] 429 U.S. 507 (1977).

aside the Board's orders. We also deny the Board's cross-applications for enforcement.

I. Background

The factual antecedents of the instant disputes revolve around a specific technological innovation—containerization—that has had a momentous impact on the loading and unloading of ocean-borne cargo.[7] Containers are large metal receptacles that can accommodate upwards of 30,000 pounds of cargo and that can be moved to and from a ship as a single unit.[8] Historically, longshoremen transported such cargo piece by piece from the hold of a ship to the pier for inbound cargo and vice versa for outbound cargo.[9] Subsequent to the advent of containerization, however, the role of longshoremen in handling cargo has been greatly reduced. It is now the case that containers can be transported to and from ships without longshoremen handling any of the boxes, crates, and packages enclosed in each container.

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[7] *See Ross, Waterfront Labor Response to Technological Change: A Tale of Two Unions,* 21 LAB. L. J. 397, 398-400 (1970). The impact of containerization has been felt in ports around the world. *See, e.g.,* Davies, *In Search of Jobs and Defendants,* 36 MOD. L. REV. 78 (1973) (detailing controversies caused by containerization in British ports of Liverpool, Hull, and London).

[8] *See, e.g.,* JA(B-HR) 1056a (specifying allowable weight of one container as 33,000 pounds).

[9] *See* JA (B-HR) 337a-339a, 1087a-1089a (describing traditional work patterns of ILA labor on the docks); Ross, *supra* note 7, at 398-399 (same).

Containerization obviously engendered huge increases in dockside productivity. According to one estimate, the traditional method of handling cargo translated into a productivity factor of 1.4 tons per man-hour; containerization has made it possible for this figure to rise to 30 tons per man-hour.[10] This greater efficiency was only achieved, however, by transforming what was once a labor intensive chore into a largely mechanical one. Hence workers' expectations of job security have come into conflict with management's desire to increase productivity.

Congress has not enacted a statutory scheme whose specific purpose is either to prevent or to resolve disputes between management and labor over how best to accommodate technological innovations in the workplace. As with most other aspects of American industrial relations, the problem of technological innovation has been left to the system of private ordering we know as collective bargaining.[11] A complete understanding of the controversies before us, there-

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[10] JA(B-HR) 1090a-1091a (before containerization, "an employer * * * thought he was doing good with 30 ton per gang of 22 men. We can now with the container handling method, with a crane, one crane, and a 20-man gang load as high as 600 tons per hour * * *.") ; *see* Ross, *supra* note 7, at 400 (one major shipper reports twentyfold increase in productivity).

[11] Other nations have made different choices. *See, e.g.,* Redundancy Payments Act 1965, *recodified in* Employment Protection Consolidation Act 1978 (British legislation that compensates workers who have been made "redundant" due to managerial initiative or technological innovation). For a critique of this Act, *see* Fryer, *The Myths of the Redundancy Payments Act,* 2 INDUS. L. J. 1 (1973).

fore, requires not only a knowledge of the specific incidents that precipitated the disputes, but also an appreciation for the adjustments to containerized shipping that have been made through the collective bargaining process in the three port cities involved in these cases.

A. *Containerization in the Ports of Baltimore and Hampton Roads*

CONASA represents constituent shipping associations, including the Hampton Roads Shipping Association (HRSA) and the Steamship Trade Association of Baltimore (STAB), in ports from Massachusetts to Virginia.[12] Since its formation in 1970 CONASA has bargained on behalf of its members with the ILA over certain key issues, including containerization, on a master-contract basis.[13] Prior to the formation of CONASA, North Atlantic ports generally adopted the master terms of the labor agreement for the Port of New York.[14]

Due in large measure to the controversy surrounding containerization, the negotiation in New York of the 1968 collective bargaining agreement was a bitter affair that occasioned a strike of nearly two months' duration by members of the ILA.[15] The im-

[12] 231 N.L.R.B. at 358.

[13] *Id.* at 360.

[14] JA(B-HR) 1092a-1093a.

[15] JA(NY) 95a (rejected affidavit of John M. Haynes, Executive Vice President of NYSA). The strike lasted over 100 days in other ports on the Atlantic and Gulf coasts. *Id.*

[Footnote continued on page 7a]

plications of this dispute for the national economy were sufficiently far-reaching to involve mediators appointed by the President of the United States in the dispute's resolution.[16] Part of the agreement that finally emerged in 1968 was a set of rules, known as the Rules on Containers, which represented the compromise reached between management and labor on the containerization issue. The 1968 New York agreement, whose master terms were adopted that year by other ports on the North Atlantic coast, marks the first time that the Rules on Containers were included in the labor contracts in Hampton Roads and Baltimore.[17]

[15] [Continued]

Because the Administrative Law Judge (ALJ) in No. 78-1510 (NY) believed that the case before him was controlled by *International Longshoremen's Ass'n* v. *NLRB*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977), he refused to permit the petitioners here to adduce and develop virtually any facts in their defense. *See* ALJ's Order Striking All Affirmative Defenses, JA(NY) 47a-51a; ALJ's Order Rejecting Evidence and Closing Hearing, JA(NY) 52a-53a. Accordingly, proffered affidavits that were rejected by the ALJ, such as the one cited in this footnote, will be noted as such.

[16] *See Intercontinental Container Transport Corp.* v. *New York Shipping Ass'n*, 426 F.2d 884, 888 (2d Cir. 1970) ("In the course of the controversy preceding the execution of the [1968-71 collective bargaining agreement], a Taft-Hartley 80-day injunction was granted and the Board of Inquiry set up in connection with that injunction stated in its report to the President that containerization was the 'most urgent item' of difference between the parties.").

[17] The Rules on Containers as included in the 1968 Hampton Roads agreement are reproduced at JA(B-HR) 529a-531a. The Rules as included in the 1968 Baltimore agreement are

Containerized shipping was first introduced in Baltimore and Hampton Roads in 1965 and 1966,[18] but did not have a substantial impact on work patterns in these ports until the late 1960s and early 1970s, by which time the Rules were adopted. For example, the first crane used to move containers to and from ships was erected in Hampton Roads in 1968 or 1969.[19] And, as a further example, one major shipper, United States Lines, moved only "a handful" [20] of containers through the Port of Baltimore in 1965, about 4,000 containers in 1969, and 25,000 just a few years later in 1973.[21] Thus, although the 1968 Rules on Containers were the parties' collectively bargained response to containerization—and, as such, postdated rather than antedated the advent of containerization—there was in fact no significant time lag between the technological development and the parties' collectively bargained response to it.

To understand the scope of the Rules on Containers, we must first appreciate the different ways in which container loads of cargo are classified. A "consolidated full container load" (CFCL) consists of

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reproduced at JA(B-HR) 553a-555a. The Rules as included in the 1968 New York master contract are discussed in respondent's brief (NY) at 6. Any differences among the three versions are, for present purposes, insignificant. The 1968 Rules for Hampton Roads are reprinted in Appendix A to this opinion.

[18] *See* 231 N.L.R.B. at 359; JA(B-HR) 78a, 462a-463a, 1023a, 1091a.

[19] JA(B-HR) 1112a.

[20] 231 N.L.R.B. at 354 n.8 (Fanning, Chairman, dissenting).

[21] *Id.* at 362.

shipments consolidated into a single container whose cargo belongs to more than one consignee. A "less than trailer load" (LTL) or a "less than container load" (LCL) also refers to a container whose cargo belongs to more than one consignee. A "full shippers' load" (FSL) or "shippers' load," in contrast, is a container of cargo from one shipper to a single beneficial owner consignee.[22] The controversy in Baltimore and Hampton Roads centered on the stripping and stuffing—packing and unpacking—of FSL containers.

It appears that in the Ports of Hampton Roads and Baltimore, in the few years between introduction of containerized shipping and adoption of the Rules on Containers, ILA labor stripped consolidated container loads at the pier.[23] Unless ILA stripping was requested by the consignee's agent or by the stevedore, however, shippers' loads were placed by ILA labor on the pier, where truckmen would then pick up the FSL container intact either to deliver it to the beneficial owner or to store the cargo.[24] The 1968 Rules were to an extent a formalization of these work practices. The Rules provided that ILA labor at the pier

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[22] 231 N.L.R.B. at 359; JA(B-HR) 68a-69a. This opinion uses the terms "FSL" and "shippers' load" interchangeably, and will often refer to LTL, LCL, and CFCL cargo by the generic term "consolidated container loads." Also, the term "shipper" is used to refer to a shipping company that is a member of a CONASA shipping association.

[23] 231 N.L.R.B. at 359.

[24] *Id.* at 359-360.

was to strip and stuff consolidated container loads that came from or were destined for any person who was not the beneficial owner of the cargo and who was located within 50 miles of the port.[25] The Rules further provided that a shipping company had to pay liquidated damages for each of its containers not handled in accordance with the Rules.[26] And for each container, including FSL containers, that passed over the docks without stripping or stuffing by longshoremen, the shipper was required to pay a royalty into an ILA fund.[27]

The 1968 Rules on Containers expired with the rest of the collective bargaining agreement in 1971, at which time further labor-management conflict over the containerization issue ensued.[28] By this time CONASA was bargaining on behalf of HRSA and STAB. The ultimate compromise reached by CONASA and the ILA on containerization, after another long strike, was to retain the same rules for handling containers and for paying royalties as were embodied in the 1968 agreement, except that the 1971

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[25] *See* Title I (introductory title to 1968 Rules on Containers entitled "Constainerization"), *reprinted in* Appendix A *infra.*

[26] *See* Rule C.5 (liquidated damages clause in 1968 Hampton Roads Rules on Containers providing for damages of $150 per container), *reprinted in* Appendix A *infra.* Liquidated damages were $250 per container both in Baltimore, JA(B-HR) 555a, and in New York, respondent's brief (NY) at 6.

[27] *See* 231 N.L.R.B. at 360; JA(B-HR) 94a-95a, 146a-147a, 302a, 555a.

[28] JA(NY) 101a (rejected affidavit of John M. Haynes).

agreement provided for an increase in liquidated damages for rule infractions.[29]

As can be seen, the Rules in existence from 1968 to 1974 did not in terms require that ILA labor handle FSL cargo at the pier. But the Administrative Law Judge (ALJ) found that, "[b]eginning in 1969, following the execution of the 1968 agreement, ILA longshoremen stripped full shippers' loads which were to be delivered to a warehouse for storage within a 50-mile radius of the center of the port. ILA freight handlers loaded the freight onto trucks for delivery to the warehouse." [30] Yet FSL containers whose cargo was not to be warehoused were frequently stripped by truckers at their terminals within the port area before delivery of the cargo to its beneficial owner—a practice known as "shortstopping." [31] Although there is some indication that labor-management Container Committees, established to administer the Rules,[32] considered this practice a violation of the Rules by the shipper that turned over the container,[33]

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[29] Liquidated damages were increased to $1,000 per container in both parts. The Rules on Containers as included in the 1971-1974 Hampton Roads and Baltimore agreements are reproduced at JA(B-HR) 534a-536a and JA(B-HR) 556a-559a, respectively.

[30] 231 N.L.R.B. at 360.

[31] *Id.* at 362 ("The motor carrier's decision to strip the full shipper's load may rest upon consideration of economy, safety, or state's highway and bridge regulations.").

[32] *See* Rule C.7, *reprinted in* Appendix A *infra.*

[33] 231 N.L.R.B. at 362; JA(B-HR) 150a, 318a, 354a, 475a, 998a, 1032a, 1035a-1036a, 1108a-1109a, 1140a-1143a. The

it is clear that most shortstopping was not detected by the Committees.[34]

In January 1973 a labor-management committee issued an interpretation of the Rules (the "Dublin Supplement") that brought shortstopped shippers' loads within the scope of the Rules.[35] Under the Supplement truckmen were permitted to haul FSL containers of import cargo directly to a warehouse in the port area for stripping only when the freight would be stored there for at least 30 days.[36]

Committees apparently believed that FSL containers were not expressly covered by the Rules because these containers are consigned directly to their beneficial owners and thus, unlike CFCL, LTL, and LCL containers, inherently involve no stripping prior to delivery of the cargo to its beneficial owner. Where this is not the case because shortstopping occurs, it would follow that FSL containers come within the scope of the Rules. *See* 231 N.L.R.B. at 355 (Fanning, Chairman, dissenting) ("The traditional exemption for shippers' loads was premised on the understanding that such loads are 'through' containers, much larger in size but properly analogous to a single item of bulk cargo. When taken to a trucker's warehouse to be stripped and repacked, they lose that identity.").

[34] 231 N.L.R.B. at 362.

[35] The Dublin Supplement is reproduced at JA (B-HR) 549a.

[36] 231 N.L.R.B. at 360; JA (B-HR) 260a-261a, 549a-551a, 1027a-1028a, 1034a. In dissent Chairman Fanning contended that the Dublin Supplement carved out an exception to the stuffing and stripping rights of the ILA with respect to *all* FSL containers stuffed and stripped within 50 miles of port by other than the employees of the cargo's beneficial owner. 231 N.L.R.B. at 355 n.11 (Fanning, Chairman, dissenting). Chairman Fanning's collegaues in the majority, however, flatly disagreed with his characterization. *Id.* at 352. The proper characterization of the Dublin Supplement, whatever it may be, is not germane to our decision.

The Rules on Containers included in the agreement negotiated in 1974 sought to formalize practice with respect to FSL cargo along the lines of the 1968 and 1971 agreements and the Dublin accord.[37] As the ALJ found, "Under the 1974-77 container rules, ILA labor is entitled to strip full shippers' loads, whenever such work is to be done within a 50-mile radius of the center of the port by other than the consignee's employees."[38] But FSL cargo consigned to the beneficial owner's place of business or warehoused for at least 30 days within the port area was not to be stripped by the ILA;[39] instead, the ILA would continue to receive a royalty for each container not handled by longshoremen.

Thus under the 1974 Rules, assuming that the Dublin Supplement's warehousing exception was not applicable, when employees of a trucking company before delivering FSL cargo to its beneficial owner stripped an FSL container at the company's off-pier terminal and that terminal was located within 50 miles of port, the shipping line that turned over its FSL container to the truckmen became liable for liquidated damages of $1,000 per container.

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[37] The Rules on Containers as adopted in the 1974 Baltimore and Hampton Roads agreements are reproduced at JA (B-HR) 561a-563a and JA (B-HR) 537a-543a, respectively. Because they differ in some significant respects from the 1968 and 1971 Rules, the 1974 Rules are reproduced in Appendix B to this opinion.

[38] 231 N.L.R.B. at 361. *See* Rule 1(a), *reprinted in* Appendix B *infra*.

[39] *See* Rule 2, *reprinted in* Appendix B *infra*.

B. *Containerized Shipping in the Port of New York*

Containerized transport was first introduced in the Port of New York during the 1950s.[40] In New York, as in Baltimore and Hampton Roads, the general practice prior to containerization was for ILA labor to handle cargo piece by piece.[41] The longshoremen would load export cargo on pallets[42] and would unload and sort import cargo in preparation for delivery.[43] These work practices began to change in the late 1950s with the introduction of containerization. And with the challenge to existing work practices came increased labor-management conflict. Predictably, management wished to secure the efficiency gains represented by containerized shipping as soon as possible; equally predictably, the ILA wished to fulfill its members' expectations of job security.[44]

The ILA-NYSA collective bargaining agreement negotiated in 1959 was the first to contain a provision dealing with containerized shipping. At that point containerization had not yet become widespread in New York. Indeed, by one report the first fully containerized vessel was not introduced into the busy

[40] JA(NY) 83a-89a (rejected affidavit of John M. Haynes).

[41] *Id.*

[42] A pallet is a portable platform designed for handling by forklift truck or crane and used for movement of goods.

[43] JA(NY) 83a-85a (rejected affidavit of John M. Haynes).

[44] JA(NY) 88a-90a (rejected affidavit of John M. Haynes).

North Atlantic trade route until 1967.[45] It was nevertheless thought necessary by the parties in 1959 to achieve some level of agreement on how containerized shipping would be handled.

The 1959 collective bargaining agreement expressly recognized the right of shippers belonging to the NYSA to use containers of any kind or size without ILA restrictions that would cause the containers to be stripped and restuffed at the pier.[46] There were, however, two caveats. First, the NYSA agreed to make royalty payments to a jointly administered fund for each shippers' load container that was stuffed or stripped away from the pier by non-ILA labor.[47] Second, the agreement also stipulated that

> [a]ny work performed in connection with the loading and discharging of containers for employer members of the NYSA which is performed in the Port of Greater New York whether on piers or terminals controlled by them, or whether through direct contracting out, shall be performed by ILA labor at longshore rates.[48]

Applying these terms to actual dockside disputes provide to be an arduous process fraught with difficulties. In particular, the language of the second caveat was sufficiently imprecise to require a clarifi-

[45] JA(NY) 95a (rejected affidavit of John M. Haynes). *See International Longshoremen's Ass'n*, 221 N.L.R.B. 956, 957 (1975).

[46] JA(NY) 90a-91a (rejected affidavit of John M. Haynes).

[47] JA(NY) 91a (rejected affidavit of John M. Haynes).

[48] *Id.*

cation which, according to the NYSA, was issued by that shippers' association on February 28, 1962:

> Where an employer member of NYSA supplies a container which is the property of such member, to a consolidator for loading or discharging of cargo in the Port of Greater New York, it will be stipulated that such container must be loaded or unloaded by ILA at longshore rates.[49]

As the 1960s passed, containerized shipping in the Port of New York became more widespread and ILA hostility to the innovation more pronounced. With the 1968 negotiations looming, the ILA, at its 1967 convention, asumed a hard-line position on containerization: *All* containers were to be stuffed and stripped by ILA labor at longshore rates,[50] or there was to be trouble. And trouble there was. The prolonged strike, mentioned above in the context of the situations in Baltimore and Hampton Roads, ensued and was terminated only after the appointment of a Presidential Board of Inquiry pursuant to the national emergency provisions of the Taft-Hartley Act.[51] The compromise ultimately struck between the parties was the same Rules on Containers that were adopted

[49] JA(NY) 92a (rejected affidavit of John M. Haynes). According to the ALJ in *International Longshoremen's Ass'n*, 221 N.L.R.B. 956 (1975), "[t]here is substantial conflict" over whether this clause and its predecessor aimed to secure LTL, LCL, and CFCL stripping and stuffing for ILA labor. *Id.* at 968. The Board itself in that case apparently believed that the provisions did not go that far. *Id.* at 960.

[50] JA(NY) 95a (rejected affidavit of John M. Haynes).

[51] 29 U.S.C. § 171 *et seq.* (1976).

as master terms in Baltimore and Hampton Roads. Shippers' loads and other containers that came from or went to points 50 or more miles from the Port of New York were not subject to ILA stuffing or stripping requirements.[52] CFCL, LTL, and LCL containers to be stuffed or stripped within 50 miles or port —the containers at issue in this New York case— were, however, to be stuffed or stripped by ILA labor.[53]

The seemingly chronic dockside labor problems attributable to containerization continued to flare up. The 1971 collective bargaining agreement left intact the Rules adopted in 1968, but this compromise was agreed upon only after another long strike.[54] Further discord ensued, and the ILA and CONASA, which by this time had begun bargaining for the NYSA on matters pertaining to containerization, issued their Dublin Supplement in 1973 dealing with FSL con-

[52] [T]he employers won the right to continue to move most containers, namely non-consolidated full shipper loads, without stuffing or stripping by union members. Thus, manufacturers' loads or full shippers' loads, as well as all containers coming from or going to points fifty or more miles from a port, constituting 80% of the containers moving in the Port of Greater New York, were excluded from the stuffing and stripping requirements.

* * *

JA(NY) 97a (rejected affidavit of John H. Haynes).

[53] *See* Title I (introductory title to 1968 Rules on Containers entitled "Containerization"), *reprinted in* Appendix A *infra.*

[54] JA(NY) 101a (rejected affidavit of John M. Haynes).

tainers and warehousing in the port area.[55] The collective bargaining agreement adopted in 1974 also included Rules on Containers, the final version of which manifested an intention to carry on the agreement reached in 1968 along with the Dublin accord.[56]

C. *The Role of Truckers and Consolidators Before and After the Advent of Containerized Shipping*

The charging parties before the NLRB were the following common carriers: Houff Transfer, Inc. (Houff) and Associated Transfer, Inc. (Associated) in the case originating in Baltimore and Hampton Roads, and Dolphin Forwarding, Inc. (Dolphin) and San Juan Freight Forwarders, Inc. (San Juan) in the case originating in New York.[57] Because these

[55] *See* text at notes and notes 35-36 *supra;* JA(NY) 19a (NLRB Order Consolidating Cases, etc.).

[56] The relevant provisions of the 1974 Rules in New York are reproduced at JA(NY) 16a-23a and are substantially identical to the Rules adopted in Baltimore and Hampton Roads. *See* Appendix B *infra.*

Subsequent to adoption of the 1974 collective bargaining agreement, but before its termination, conflict arose between the ILA and the shippers over whether the shippers had been abiding by the Rules. The ILA announced its intention to reopen the Rules, *see* Rule 8, *reprinted at* Appendix B *infra,* and later unilaterally suspended the Rules and began to strip all containers with the exception of shippers' loads bound for destinations outside the port area. Later, the parties resolved their differences and reinstituted the Rules in clarified form. *See* JA(NY) 108a (rejected affidavit of John M. Haynes).

[57] Houff and Associated are interstate common carriers licensed by the Interstate Commerce Commission (ICC); Dolphin and San Juan possess no such license.

charging parties alleged that secondary activities of the ILA and of CONASA and its members, including the NYSA, threatened to deprive them of part of their traditional work, we must briefly review what their traditional role has been with respect to the cargo at issue.

1. *Baltimore and Hampton Roads*

Houff and Associated are ICC-licensed interstate common carriers whose work includes transporting cargo by truck to and from the Ports of Baltimore and Hampton Roads.[58] Both carriers have terminals within 50 miles of the Port of Hampton Roads, and Houff has a terminal in Baltimore.[59] Prior to containerization, Houff Associated, and other trucking companies made trips to the piers in Baltimore and Hampton Roads to pick up loose cargo which had been unloaded and sorted by ILA labor.[60] The cargo would then be transported by the trucking companies to their trucking stations, to their warehouses, or directly to the consignee.

Since the advent of containerization in these ports, about 1965, truckmen regularly have transported FSL container loads to beneficial owner consignees both within and beyond 50 miles of the Ports of Baltimore and Hampton Roads.[61] Prior to adoption

[58] 231 N.L.R.B. at 358, 361 *et seq.*

[59] *Id.* at 358.

[60] *Id.* at 359.

[61] *Id.* at 361; JA(B-HR) 191a-192a.

of the 1968 collective bargaining agreement, which was the first in Baltimore and Hampton Roads to speak to the containerization issue, truckmen also picked up FSL containers at the pier, unstripped by ILA labor, and transported them to a nearby warehouse for stripping and storing.[62] Subsequent to the Rules' adoption in 1968, FSL containers whose cargo was to be stripped and warehoused in the port area were stripped by ILA labor,[63] but truckmen frequently picked up FSL containers and stripped them at their terminals when the cargo was not to be warehoused.[64] The record indicates that at least some personnel within the trucking industry were aware that this shortstopping of FSL containers within 50 miles of the port was regarded as a violation of the Rules on Containers committed by the shippers.[65]

2. *New York*

In the New York case Dolphin and San Juan employed subcontracted labor to consolidate various cus-

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[62] 231 N.L.R.B. at 360.

[63] *Id.*

[64] *Id.* at 362 ("The motor carrier's decision to strip the full shipper's load may rest upon consideration of economy, safety, or state highway and bridge regulations."). *See* JA(B-HR) 154a-155a, 180a-182a, 231a, 267a-268a. *See also* text at note 31 *supra.*

[65] 231 N.L.R.B. at 352 ("These [trucking industry] officials testified only that [CONASA and the ILA] and certain shipping personnel deemed these actions to be violations, not that they actually were violations, or that the trucking industry acknowledged them to be such."); *see id.* at 356 n.22 (Fanning, Chairman, dissenting).

tomers' goods by placing them into containers in preparation for shipment by sea.[66] Both companies had inland facilities within a 50-mile radius of the Port of New York.[67] The work done by Dolphin and San Juan that caused NYSA shippers to violate the Rules on Containers in the view of the Container Committee was consolidation of cargo belonging to two or more individuals into containers owned or leased by the shippers. FSL cargo is not at issue in this New York case.

Dolphin's operations antedated the adoption of the Rules on Containers by several years, although the ILA and the NYSA, as we have seen, had been negotiating over containerization since the late 1950s.[68] NYSA shippers contend that they did business with Dolphin only because Dolphin listed Massachusetts as the point of origin for the containers it filled instead of the actual point within the port area.[69] San

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[66] 98 L.R.R.M. at 1277.

[67] *Id.*

[68] *See* text at notes 46-49 *supra.*

[69] Petitioners' brief (NY) at 17-18; *see* JA(NY) 120a-121a (rejected affidavit of William O. Gohlke, former officer of Sea-Land Services, Inc. and Seatrain Lines, Inc.):

> It was quite apparent to me that though the bills of lading and other documentation suggested that the Dolphin cargo was booked as having an originating point in Massachusetts, this was not the case. The recordings of the turnaround of containers and related equipment issued on Dolphin bookings clearly showed that insufficient time elapsed between the issuance and return of the equipment to permit the containers to be transported to Massachu-

Juan was established in 1972, several years after the Rules on Containers were first adopted.[70] The containers shipped by San Juan apparently indicated Chicago as the point of origin of the containers, although they in fact were consolidated in the New York area.[71]

D. *The Incidents Precipitating the Present Disputes*

1. *Hampton Roads*

On September 24, 1974 Associated picked up eight FSL containers from United States Lines at a Norfolk pier and hauled them to its Virginia Beach terminal, where it stripped them.[72] Representatives

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setts and back. This left the unmistakable impression that the loading of the containers had to have taken place in the New York-New Jersey proximity of the Seatrain operation. It was not Seatrain's concern or my concern as an official of Seatrain to inquire into this practice. Seatrain's and my objective was to obtain business and transporting containers to and from Puerto Rico. * * *

[70] JA(NY) 164a.

[71] JA(NY) 156a-174a.

[72] 231 N.L.R.B. at 363; JA(B-HR) 195a-196a. Apparently the documentation presented to United States Lines by Associated did not indicate that the containers would be stripped at Associated's terminal by Associated's employees. There is no mention in the correspondence subsequent to the incident that the documentation presented to United States Lines served to notify the shipper of Associated's intention to strip the container, JA(B-HR) 655a-661a, and the ALJ merely noted that the consignees, whose names and locations would have been found on the delivery orders and bills of lading,

of United States Lines and the ILA, upon inspection of Associated's terminal, determined that, because of Associated's shortstopping of the containers, United States Lines was in violation of the Rules on Containers.[73] The HRSA-ILA Container Committee later ratified their determination.[74] Liquidated damages of $1,000 per container were imposed on United States Lines, which demanded reimbursement from Associated.[75] Upon the refusal of Associated to comply with the demand, United States Lines severed business relations with Associated.[76]

2. *Baltimore*

On September 24, 1974 Houff picked up in the Port of Baltimore two FSL containers from United States Lines and one from Lavino Shipping Company and transported them to its terminal in the Baltimore area for stripping before delivery of the cargo to the respective owners.[77] Once it was determined that this

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were located in Tennessee and North Carolina, 231 N.L.R.B. at 363. *See id.* at 356 n.18 (Fanning, Chairman, dissenting) ("[W]hen a container is released to a motor carrier, the delivery order specifies that the cargo is to be transported to the consignee. Intent to shortstop is thereby difficult to ascertain * * *.").

[73] 231 N.L.R.B. at 363.

[74] *Id.* The ruling was based on Rules 1(a)(3) and 2B.(2), *reprinted in* Appendix B *infra.*

[75] 231 N.L.R.B. at 363.

[76] *Id.*

[77] *Id.* at 362. Apparently the documentation presented to United States Lines and to Lavino did not indicate that the

shortstopping took place, United States Lines and Lavino were assessed $1,000 per container by the STAB-ILA Container Committee, as stipulated by the Rules on Containers, and sought indemnification from Houff.[78] When the trucking company did not indemnify the two shippers, they ceased doing business with Houff.[79]

3. *New York*

Dolphin and San Juan engaged in consolidation of CFCL, LCL, and LTL cargo into containers within 50 miles of the Port of New York.[80] When this practice was discovered, the NYSA shippers that had been supplying Dolphin with containers—Maritime Transportation Management, Inc. (MTM) and Transamerica Trailer Transport, Inc. (TTT)—were fined $4,000 and $43,000, respectively, in liquidated damages.[81] As a result of the imposition of these dam-

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containers would be stripped at Houff's terminal by Houff's employees. *Id.* ("The delivery order and bill of lading issued to Houff for the U.S. Lines containers showed the cargo was destined to Union Carbide Corporation, Alloy, West Virginia."); JA(B-HR) 1052a. *Compare* 231 N.L.R.B. at 356 n.18 (Fanning, Chairman, dissenting).

[78] 231 N.L.R.B. at 362. The ruling was based on Rules 1(a)(3) and 2B.(2), *reprinted in* Appendix B *infra*.

[79] 231 N.L.R.B. at 362-363.

[80] 98 L.R.R.M. at 1277.

[81] *Id.*; JA(NY) 25a (NLRB Order Consolidating Cases, etc.). The ruling was based on Rule 1(a)(1), *reprinted in* Appendix B *infra*.

ages, MTM and TTT refused to furnish the consolidators with any additional containers.[82]

II. Secondary Boycotts, Work Preservation, and the Rules on Containers

The common carriers, charging parties before the NLRB, argued successfully there that certain of the Rules on Containers and efforts by the ILA to enforce those Rules violated the congressional proscription of secondary boycotts.[83] Petitioners here contend that the Rules and action supporting the Rules had a legal primary purpose—work preservation—and that the NLRB committed an error of law in holding otherwise. To respond to these contentions we must peruse the law of secondary boycotts, including the work preservation doctine, and determine whether the Board applied a proper understanding of the law to the cases before us.

A. *The Proscription of Secondary Boycotts*

The NLRA's proscription of secondary boycotts is premised on the distinction between primary and secondary union activity.[84] As fundamentally important as this distinction is, however, "it does not present

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[82] 98 L.R.R.M. at 1277.

[83] The precise Rules challenged were those that were held applicable to the respective charging parties' activities. *See* Notes 74, 78, & 81 *supra*.

[84] *See generally* Lesnick, *Job Security and Secondary Boycotts: The Reach of NLRA § 8(b)(4) and 8(e)*, 113 U. Pa. L. Rev. 1000, 1004-1018 (1965) (describing "relevance and content" of the primary-secondary dichotomy).

a glaringly bright line." [85] Indeed, both the NLRB and the courts, in interpreting the congressional mandate prohibiting secondary activity, have necessarily undertaken, as Justice Frankfurter put it, the task of drawing lines "more nice than obvious." [86]

The relevant statutory provisions are Sections 8(b)(4)(B) and 8(e) of the NLRA.[87] The former—once described as "surely one of the most labyrinthine provisions ever included in a federal labor statute" [88]—prohibits unions and their agents from engaging in activities the object of which is forcing one employer to cease doing business with another.[89] Although the statutory language does not in terms focus on secondary activity,[90] both the legislative history [91] and

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[85] *Local 761, IUERMW* v. *NLRB*, 366 U.S. 667, 673 (1961) (opinion of Frankfurter, J.).

[86] *Id.* at 674.

[87] 29 U.S.C. §§ 158(b)(4)(B), (e) (1976).

[88] Aaron, *The Labor-Management Reporting and Disclosure Act of 1959 (pt. 2)*, 73 HARV. L. REV. 1086, 1113 (1960).

[89] *See* Lesnick, *The Gravamen of the Secondary Boycott*, 62 COLUM. L. REV. 1363, 1364 (1962).

[90] (b) Unfair labor practices by labor organization

It shall be an unfair labor practice for a labor organization or its agents—

* * * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles,

a proviso that the prohibition does not apply to "any primary strike or primary picketing" [92] make clear the cardinal importance of the primary-secondary distinction. The latter provision, Section 8(e),[93] proscribes not secondary activity, but "collective-bargaining contracts whereby the employer ceases or agrees to cease doing business with any other per-

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materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representatives of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in his clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing[.]

29 U.S.C. § 158(b)(4)(B) (1976).

[91] *See, e.g.*, S. Rep. No. 105, 80th Cong., 1st Sess. 22 (1947), *reprinted in* I NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 at 428 (1948) (hereinafter cited as LEGISLATIVE HISTORY).

[92] 29 U.S.C. § 158(b)(4)(B) (1976).

[93] 29 U.S.C. § 158(e) (1976).

son." [94] Although the provision literally prohibits any understanding aimed at forcing a cessation of business,[95] it is clear that this proscription of "hot cargo" agreements embodies the same distinction between lawful primary and unlawful secondary activity as

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[94] *NLRB* v. *Enterprise Ass'n of Steam, etc. Pipefitters*, 429 U.S. 507, 517 (1977).

[95] It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided,* That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further,* That for the purposes of this subsection and subsection (b) (4) (B) of this section the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further,* That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception.

29 U.S.C. § 158(e) (1976).

Section 8(b)(4)(B), and applies only to agreements with secondary objectives.[96]

The general aim of Congress in passing these prohibitions is clear: that is, according to one commentator, "to protect neutral employers—those not directly involved in a labor dispute—from direct union sanctions." [97] The Senate Report accompanying the Taft-Hartley Act casts this general purpose in only slightly more specific terms: Congress sought to proscribe "a strike against employer A [the secondary employer] for the purpose of forcing that employer to cease doing business with employer B [the primary employer] * * * (with whom the union has a dispute)." [98] Unfortunately, attempts to characterize congressional intent with any more specificity have not been notably successful.[99] Nevertheless, the NLRB and the courts are required in the course of deciding cases to apply the general congressional

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[96] *See NLRB* v. *Enterprise Ass'n of Steam, etc. Pipefitters*, 429 U.S. 507, 517 (1977) (provision interpreted "as having no broader reach than § 8(b)(4) itself"); *National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. 612, 620, 623-629 (1967).

[97] H. WELLINGTON, LABOR AND THE LEGAL PROCESS 275 (1968).

[98] S. Rep. No. 105, 80th Cong., 1st Sess. 22 (1947), *reprinted in* LEGISLATIVE HISTORY, *supra* note 91, at 428.

[99] Professor Cox, for example, after reviewing the possibilities presented under the current legislation, concluded that the problems in applying the secondary boycott provisions "can be minimized by more careful statutory classification." A. COX, LAW AND THE NATIONAL LABOR POLICY 38 (1960).

proscription in various specific contexts:[100] in cases, for example, where there are ally employers;[101] in common situs situations;[102] in consumer picketing cases;[103] and in the context of work preservation agreements.[104] The last of these contexts is the one with which we are presented here.

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[100] *See* Goetz, *Secondary Boycotts and the LMRA: A Path Through the Swamp,* 19 KANS. L. REV. 651, 658-703 (1971) (describing the various contexts in which secondary boycotts occur).

[101] *See, e.g., NLRB* v. *Business Mach. & Office Appliance Mechanics Conf. Board,* 228 F.2d 553, 559 (2d Cir. 1955) ("We therefore hold that an employer is not within the protection of § 8(b) (4) [(B)] when he knowingly does work which would otherwise be done by the striking employees of the primary employer and where this work is paid for by the primary employer pursuant to an arrangement devised and originated by him to enable him to meet his contractual obligations.").

[102] *See, e.g., Local 761, IUERMW* v. *NLRB, supra* note 85; 366 U.S. at 680-682 (the portion of the struck employer's premises used by employees of independent contractors who perform tasks connected to the normal operations of the struck employer are not exempted from strike activity by the struck employer's employees under § 8(b) (4) [(B)].

[103] *See, e.g., NLRB* v. *Fruit & Vegetable Packers & Warehousemen,* 377 U.S. 58, 71-72 (1964) (picketing confined to persuading customers to cease buying the product of the primary employer is not proscribed by § 8(b) (4) (ii) (B)).

[104] *See, e.g., NLRB* v. *Enterprise Ass'n of Steam, etc. Pipefitters,* 429 U.S. 507, 517 (1977) ("Section 8(e) does not prohibit agreements made for 'primary' purposes, including the purpose of preserving for the contracting employees themselves work traditionally done by them."). Alleged hot cargo clauses may have application in areas other than work preservation, but these are of no concern here. *See* Goetz, *supra* note 100, 19 KANS. L. REV. at 683-694.

B. *The Supreme Court's Work Preservation Doctrine:* National Woodwork *and* Pipefitters

An immutable feature of modern industrial economies is their dynamism. In large part this is due to the profound impact that technological advances have on the means of production. One can turn to any sector of our economy—from communications to transportation to food processing—and witness the blinding speed with which modern technology can alter our conception of the status quo.

It is inevitable that such rapid change will cause cleavages within a society; one example is the displacement of workers whose jobs and skills are tied to supplanted forms of technology. As mentioned earlier, there is no legislative scheme in this country designed specifically to deal with labor disputes engendered by technological innovations.[105] Such disputes instead are channeled into the system of collective bargaining; the labor relations questions raised by changes in the means of production are answered by the parties themselves rather than through state intervention.[106]

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[105] One commentator has lamented that "[t]he pressures created by momentous problems of productivity and job security under changing technological and market conditions are contained or released by no more sensitive a legal instrument than a legislative determination to protect neutrals from being drawn into the disputes of others." Lesnick, *supra* note 84, 113 U. PA. L. REV. at 1041.

[106] An interesting contrast is Great Britain, which not only has a system of compensation designed to alleviate the strain on workers who are made "redundant," *see* note 11 *supra,* but

The courts in this country, including the Supreme Court, have wisely allowed for resolution of such disputes through the collective bargaining process even though the resolutions agreed to by the parties often tread perilously close to the congressional proscription of secondary boycotts.[107] The classic example of such a resolution is an agreement by the parties to preserve work for the contracting employer's employees when the nature or the location of that work has changed due to technological advances. Inescapably the effects of such agreements are felt upon employers (and their employees) other than the controlling employer. But those effects are incidental ot the agreement with the contracting employer and not necessarily reflective of a secondary objective such as organizing the employees of the other affected

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which also has attempted to solve its version of the containerization controversy through direct parliamentary intervention. *See* Dock Work Regulations Act 1976.

[107] The leading Supreme Court cases are discussed in text at notes 109-132 *infra*. For cases from the Court of Appeals, *see, e.g., American Boiler Manufacturers Ass'n* v. *NLRB*, 404 F.2d 547, 561 (8th Cir. 1968), *cert. denied*, 398 U.S. 960 (1970) (no violation of the NLRA's prohibition of secondary boycotts when the union's conduct was addressed to enforcement of its collective bargaining agreement, when the conduct related solely to preservation of the traditional tasks of jobsite plumbers, and when the union had no objectives elsewhere); *Meat & Highway Drivers, Dockmen, etc., Local 710* v. *NLRB*, 335 F.2d 709, 713 (D.C. Cir. 1964) ("If the jobs are fairly claimable by the unit, they may, without violating either § 8(e) or § 8(b)(4)(A) or (B), be protected by provision for, and implementation of, no-subcontracting or union standards clauses in the bargaining agreements." (footnotes omitted)).

employers. Thus under the NLRA's proscription of secondary boycotts, these work preservation agreements, as well as primary collective action enforcing their terms, are not considered illegal.[108]

The validity of such agreements under the NLRA is supported by sound policy reasons. First, it is of paramount importance that Congress, rather than imposing a solution, has chosen to follow the parties themselves to deal with labor problems generated by technological change. If the courts and the NLRB were to upset reasonable efforts by the parties to achieve some level of accommodation, this broad policy choice of Congress would be frustrated. Second, unwarranted interference by the NLRB and the courts could inject a massive dose of uncertainty into the planning functions of both management and labor. If the parties suspect that reasonable attempts to accommodate technological advances will be torn asunder by a reviewing agency or court, they will be reluctant to undertake the effort. Workers particularly could be obdurate when asked to compromise some degree of job security for the sake of efficiency if that compromise might later be cast aside. In the event of industrial disruption caused by such induced intransigence there would be no winners: not only would the workers lose work, but also the efficiency gains represented by the innovation would needlessly, if per-

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[108] *See* note 184 *infra* (citing cases); H. WELLINGTON, *supra* note 97, at 275 ("the [NLRA] does not interdict the primary strike *or its attendant consequences.*" (emphasis added; footnote omitted)).

haps temporarily, be lost to management and to our national economy.

Two major Supreme Court cases control our understanding of the legality of work preservation agreements under the NLRA. The first is *National Woodwork Manufacturers Ass'n* v. *NLRB*,[109] a case in which a provision in a collective bargaining agreement was challenged under Section 8(e).[110] The contested clause stipulated that bargaining unit employees (carpenters) would not handle any doors that were "pre-fitted," *i.e.*, made ready for installation prior to shipment to the jobsite.[111] The object of this provision, according to the Administrative Law Judge, the Board, and ultimately the Supreme Court, was preservation of the fitting work performed traditionally by onsite carpenters.[112]

In upholding the provision the Court expounded upon the nature of the inquiry that courts and the NLRB must undertake when determining the legality of such agreements. "The determination * * * cannot be made without an inquiry into whether, under all the surrounding circumstances, the Union's objective was preservation of work for [the contracting employer's] employees, or whether the agreements and boycott were tactically calculated to satisfy union

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[109] 386 U.S. 612 (1967).

[110] 29 U.S.C. § 158(e) (1976).

[111] 386 U.S. at 615-616.

[112] *Id.* at 645-646.

objectives elsewhere." [113] The Court continued: "The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-à-vis* his own employees." [114] As one commentator has written of *National Woodwork*, "Since the object of the union was to preserve work for unit employees, and since it had no quarrel with the union status or other personnel relations of the door manufacturer, the contract provision was upheld." [115]

In a case decided in 1977 the Supreme Court once again confronted the work preservation issue, but with a different result. In *NLRB* v. *Enterprise Ass'n of Steam, etc. Pipefitters*,[116] the Court refused to ap-

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[113] *Id.* at 644 (footnote omitted). The Court provided an elaboration of "all the surrounding circumstances" in a footnote:

> As a general proposition, such circumstances might include the remoteness of the threat of displacement by the banned product or services, the history of labor relations between the union and the employers who would be boycotted, and the economic personality of the industry. * * *

Id. at 644 n.38.

[114] *Id.* at 645 (footnote omitted).

[115] R. GORMAN, LABOR LAW 265 (1976). On the day *National Woodwork* was decided the Court also handed down a companion case. In *Houston Insulation Contractors' Ass'n* v. *NLRB*, 386 U.S. 664 (1967), the Court, relying largely on the reasoning in *National Woodwork*, held that a work preservation agreement between a company and a local union could be effectuated by another local of the same union. *See* R. GORMAN, *supra*.

[116] 429 U.S. 507 (1977).

prove union activity in support of what appeared to be a work preservation clause. In *Pipefitters* a subcontractor on a construction project had agreed to the contested clause in its labor agreement with its steamfitter employees. Under the clause all pipe threading and cutting were to be performed on the jobsite by the steamfitters, who had traditionally performed this work.[117] This provision notwithstanding, the main contractor decided, and the subcontractor agreed, to order pre-threaded and pre-cut pipes for the job. The steamfitters refused to install the pipes, and a work disruption ensued.[118]

The NLRB, confronted with this factual situation, found that the contested clause had a primary purpose—work preservation [119]—but that the union's activity to enforce the agreement did not.[120] The NLRB's holding was premised on its "right to control" test, which is based on the determination whether the coerced employer—in *Pipefitters*, the subcontractor—could "control," *i.e.*, award, the work sought by the union.[121] If coerced employer cannot control the work, then it follows that the union's actions are

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[117] *Id.* at 512.

[118] *Id.* at 511-513.

[119] 204 N.L.R.B. 760, 760 (1973).

[120] *Id.*

[121] 429 U.S. at 521. *See* R. DERESHINSKY, THE NLRB AND SECONDARY BOYCOTTS 117 (1972) ("Essentially, the test required that the employer have the right to control the matter at issue in order to be designated a primary employer.").

directed not at this employer, but at another employer who in fact does control the work. In *Pipefitters* the object of the strike was to obtain work controlled not by the subcontractor, with whom the steamfitters had agreed to the lawful work preservation clause, but by the main contractor; in the Board's view this meant that the object of the boycott was secondary.[122]

The decision of the NLRB was set aside on appeal by this court,[123] but the Supreme Court reversed our decision.[124] In so doing the Supreme Court was exceedingly careful to cast its decision in terms of its reasoning in *National Woodwork*. As the Court discerned the issue in *Pipefitters*, for example, it turned on "whether the boycott was 'addressed to the labor relations of the contracting employer *vis-à-vis* his own employees.' " [125] This formulation of the issue corresponded to the Court's view of the scope of Section 8(e), which also came from *National Woodwork*. The provision "does not prohibit agreements made for 'primary' purposes, including the purpose of preserving for the contracting employees themselves work traditionally done by them." [126]

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[122] 204 N.L.R.B. at 760.

[123] *Enterprise Ass'n of Steam, etc. Pipefitters* v. *NLRB*, 521 F.2d 885 (1975) (*en banc*), *rev'd*, 429 U.S. 507 (1977).

[124] 429 U.S. at 532.

[125] *Id.* at 511 (*quoting National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. at 645).

[126] *Id.* at 517 (*citing National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. at 635).

In holding that the strike in *Pipefitters* was unlawful secondary activity, the Supreme Court affirmed several points of law that merit reiteration here. First, the Court supported *National Woodwork's* admonition that courts and the NLRB examine "all the surrounding circumstances" [127] when assessing the validity of a work preservation clause.[128] Second, the Court also affirmed *National Woodwork's* insistence that to be considered a legal attempt at work preservation the challenged boycott must focus on the "labor relations of the contracting employer *visà-vis* his own employees." [129] Third, the Court held that a provision in a collective bargaining agreement cannot itself immunize union activity that otherwise is secondary in character.[130] Fourth, the NLRB, according to the Court, was perfectly within the law in applying its right to control test as a means of delineating the scope of lawful primary activity.[131] Fifth, the Court reaffirmed that where the NLRB's decision is based on a proper understanding of the prevailing law, appellate review is confined to a determination of "whether the Board's findings were 'supported by substantial evidence on the record considered as a whole.' " [132]

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[127] 386 U.S. at 644.

[128] 429 U.S. at 524.

[129] 386 U.S. at 645, *quoted at* 429 U.S. at 511, 528.

[130] 429 U.S. at 514-521.

[131] *Id.* at 521-528.

[132] *Id.* at 531 (*quoting* 29 U.S.C. § 160(e) (1976)).

Before applying these legal standards to the cases before us, we must make a brief excursus into the litigation history of the Rules on Containers.

C. *The Rules on Containers in the Courts*

The Rules on Containers have been the subject of extensive litigation over the past decade. The Second Circuit was the first Court of Appeals to adjudge the validity of the Rules when, in *Intercontinental Container Transport Corp.* v. *NLRB* (*ICTC*),[133] a consolidator challenged the Rules as a conspiracy in restraint of trade and hence as violative of the Sherman Act.[134] To decide whether the Rules amounted to an antitrust violation the court had to determine whether the union's activities of bargaining for and enforcing the Rules fell within the labor exemption to the Sherman Act.[135] This determination rested in part on "whether the action is in the union's self-interest in an area which is a proper subject of union concern." [136]

The court had little difficulty in finding that the Rules were in the interest of the union and its members. Noting that the Supreme Court has repeatedly

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[133] 426 F.2d 884 (2d Cir. 1970).

[134] 15 U.S.C. § 1 *et seq.* (1976).

[135] *See Amalgamated Meat Cutters* v. *Jewel Tea Co.*, 381 U.S. 676 (1965). For a recent statement of the Supreme Court's views on the labor exemption to the antitrust laws, *see Connell Constr. Co.* v. *Plumbers & Steamfitters, Local 100*, 421 U.S. 616 (1975).

[136] 426 F.2d at 887.

held that preservation of jobs is within the area of proper union concern,[137] the court concluded that "[t]he [Rules] have as their object the preservation of work traditionally performed by longshoremen covered by the agreement." [138] Rather than aiding a group of businessmen to violate the Sherman Act, "the union here, acting solely in its own self-interest, forced reluctant employers to yield to certain of its demands." [139] The agreement between management and labor on the containerization issue was held within the labor exemption to the antitrust laws.

After the Second Circuit's decision in *ICTC*, unfair labor practice charges were filed against the ILA and the NYSA by two off-pier consolidators that operated near the Port of New York. The charges alleged that the Rules on Containers were an agreement to engage in a secondary boycott—a "hot cargo" agreement—contrary to the NLRA [140] and that enforcement of the Rules by the ILA was also violative of the Act's proscription of secondary boycotts.[141] The Administrative Law Judge assigned to the case upheld the Rules as valid work preservation clauses,

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[137] *Id.* (*citing National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. 612 (1967); *Fibreboard Paper Products Corp.* v. *NLRB*, 379 U.S. 203 (1964); *Order of Railroad Telegraphers* v. *Chicago & Northwestern R. Co.*, 362 U.S. 330 (1960)).

[138] *Id.*

[139] *Id.* at 888.

[140] 29 U.S.C. § 158(e) (1976).

[141] 29 U.S.C. § 158(b)(4)(ii)(B) (1976).

but he was reversed by the NLRB.[142] The ILA and the NYSA sought review of the NLRB's decision in the Second Circuit, which, in *International Longshoremen's Ass'n* v. *NLRB* (*Conex*),[143] affirmed the Board.

The court noted its previous decision in *ICTC*, but found the holding in that case distinguishable because *ICTC* arose in an antitrust context.[144] In *Conex*, by contrast, the court believed that a measure of deference was owed the NLRB and that this factor allowed it to affirm the Board without directly overruling its decision in *ICTC*.[145] The NLRB, in reviewing the claim of the ILA and the NYSA that the Rules were valid under the Supreme Court's work preservation doctrine enunciated in *National Wood-*

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[142] *International Longshoremen's Ass'n*, 221 N.L.R.B. 956 (1975).

[143] 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977). Circuit Judge Feinberg dissented from the majority decision issued by Senior Circuit Judge Moore and Senior District Judge Wyzanski, sitting by designation.

[144] *Id.* at 708 n.1.

[145] Correspondingly, the District Court for the District of New Jersey, in a suit brought subsequent to the Second Circuit's decision in *Conex*, held that, just as an antitrust determination does not control a labor case, a labor law determination of unlawful work acquisition does not obviate the need for inquiry under the antitrust laws. The court denied summary judgment in favor of antitrust claims that grew out of *Conex*. *See Consolidated Express, Inc.* v. *New York Shipping Ass'n*, 452 F.Supp. 1024, 1036-1044 (D. N.J. 1977), *rev'd on other grounds*, —— F.2d —— (3d Cir. Nos. 78-1529 & 78-1530, decided April 16, 1979).

work, had found that the work at issue was not the loading and unloading of ships, the traditional work of the ILA, but the off-pier stripping and stuffing of containers.[146] In the relatively few years since the advent of containerization, off-pier stripping and stuffing of containers had been performed by the employees of consolidators; hence the ILA was really engaged in work acquisition rather than work preservation.[147] This conclusion, according to the divided Second Circuit panel, was "supported by substantial evidence and by sound analysis." [148] The Board's order thus was enforced.

The First Circuit, in *International Longshoremen's Ass'n* v. *NLRB*,[149] reached a conclusion similar to that of the Second Circuit in *Conex*. The panel was presented with a dispute apparently generated by an expansive interpretation of the Rules by a Puerto Rican local of the ILA, Local 1575. Although observing that *Conex* was "strikingly similar" to its case,[150] the First Circuit went on to note that "[t]he fact situation we face presents a slightly stronger case for enforcement under *National Woodwork* than did the situation considered by the Second Circuit." [151] The NLRB had found that Local 1575 wished to ap-

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[146] 221 N.L.R.B. at 959.

[147] *Id.* at 959-961.

[148] 537 F.2d at 712.

[149] 560 F.2d 439 (1st Cir. 1977).

[150] *Id.* at 442-443.

[151] *Id.* at 445.

ply the Rules not only so that any consolidating work would be done by ILA labor at the pier, but also so that members of the local would displace the non-union employees at the consolidator's facilities.[152] Hence the union, through its local, had manifested an interest not only in work preservation, but also in union organization of the excluded employer. The union's interest in the labor relations of the excluded employer was in itself sufficient to make *National Woodwork's* work preservation exception to secondary boycotts inapposite.[153] Again, the Board's order was enforced.[154]

The Rules on Containers also have been reviewed by the Fourth Circuit in a case arising out of the instant proceeding in the Port of Hampton Roads. In *Humphrey* v. *International Longshoremen's Ass'n*,[155] that circuit vacated and remanded the District Court's order denying a temporary injunction sought by the Regional Director of the NLRB

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[152] *Id.*

[153] *Id.* at 445-446.

[154] The First Circuit also discussed the Supreme Court's decision in *Pipefitters*, which was handed down just six days after oral argument in the First Circuit case. The First Circuit reasonably interpreted *Pipefitters* as supportive of the Board's discretion in assigning degrees of importance to the various circumstances involved in each case. 429 U.S. at 524. The First Circuit concluded that the Supreme Court's reasoning in *Pipefitters* "remove[s] any lingering doubts as to the enforceability of the Board's present order." 560 F.2d at 446.

[155] 548 F.2d 494 (4th Cir. 1977).

under 29 U.S.C. § 160(*l*) (1976).[156] The District Court had held that the NLRB did not have reasonable cause to believe that the Rules violated the NLRA.[157] The Fourth Circuit, however, found that the District Judge had erred because the work in controversy was not the ILA's traditional work of loading and unloading ships, but the off-pier work of stripping and stuffing containers.[158] Consequently, the court "conclude[d] that [the NLRB] ha[d] ample reasonable cause to believe that appellees are violating the Act."[159] The court ordered that on remand the District Court enter the appropriate injunction.

D. *Work Preservation and the Rules on Containers*

Under the Rules on Containers included in the 1974-1977 collective bargaining agreement, ILA labor was entitled to strip and stuff FSL containers whenever that work would otherwise be done within 50 miles of port by workers other than the employees

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[156] 401 F.Supp. 1401 (E.D. Va. 1975), *vacated*, 548 F.2d 494 (4th Cir. 1977). *Compare* the District Court's conflicting decision in *Humphrey* v. *International Longshoremen's Ass'n*, D. Md. No. Y-75-1395, decided March 25, 1976 (unreported).

[157] 401 F.Supp. at 1407.

[158] Circuit Judge Craven dissented from the majority opinion authored by Circuit Judge Russell and joined by Chief Judge Markey of the United States Court of Customs and Patent Appeals, sitting by designation.

[159] 548 F.2d at 500 (footnote omitted).

of the cargo's beneficial owner.[160] Houff and Associated complained to the NLRB that this provision and its enforcement by the ILA in the Ports of Baltimore and Hampton Roads allowed the ILA labor to acquire work of Houff and Associated rather than to preserve work for members of the ILA. Also under the 1974-1977 Rules, ILA labor was entitled to stuff and strip all LCL, TLT, and CFCL containers that originated or terminated within 50 miles of port.[161] Dolphin and San Juan complained to the NLRB that this provision and its enforcement by the ILA in the Port of New York served to acquire work traditionally done by Dolphin and San Juan rather than to preserve work for members of the ILA. To decide whether the NLRB's receptivity to these charges was well founded, we must apply the teaching of *National Woodwork* and *Pipefitters* to the NLRB's decisions.[162]

1. *All the surrounding circumstances*

Did the Board, in characterizing the challenged Rules as work acquisition rather than work preservation clauses, examine "all the surrounding cir-

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[160] *See* Rules 1(a)(2), (3), and 2B.(2), *reprinted in* Appendix B *infra*. The Dublin Supplement, *discussed in* text at notes 35-36 *supra*, exempted from these provisions FSL containers whose cargo was to be stripped within the 50-mile radius and stored in a warehouse for at least 30 days. *See* Rule 2B.(4), *reprinted in* Appendix B *infra*.

[161] *See* Rule 1(a)(1), (2), *reprinted in* Appendix B *infra*.

[162] *See* text at notes 127-132 *supra* (enumerating points of law from *National Woodwork* and *Pipefitters*).

cumstances"?[163] When defining the work in controversy—the first step in determining whether the union was engaged in work preservation or work acquisition[164]—the Board settled on off-pier stripping and stuffing of containers.[165] Because longshoremen have always done their work on the piers, the Board reasoned, they could not traditionally have performed the work in controversy.[166] Instead, employees of consolidators and trucking companies with off-pier terminals did the work of stuffing and stripping containers away from the pier.[167] Hence for ILA labor to lay claim to this work amounted to work acquisition rather than to preservation of traditional ILA work.[168]

This formulation of the work in controversy, however, could not reasonably have been based on "all

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[163] *National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. 612, 644 (1967); *see NLRB* v. *Enterprise Ass'n of Steam, etc. Pipefitters*, 429 U.S. 507, 524 (1977).

[164] *See International Longshoremen's Ass'n*, 221 N.L.R.B. 956, 959 (1975) ("in order to properly evaluate the validity of ILA's claim to the work, 'it is essential to define with some precision the work in controversy since that is the predicate upon which the issue of work preservation must turn.'" (*quoting* ALJ)).

[165] *See* 231 N.L.R.B. at 352, 365 (off-pier stripping of FSL containers within 50 miles of port); 98 L.R.R.M. at 1277 ("traditionally the off-pier stuffing and stripping of containers was performed by consolidating companies and not longshoremen").

[166] 231 N.L.R.B. at 365; 98 L.R.R.M. at 1277.

[167] 231 N.L.R.B. at 365; 98 L.R.R.M. at 1277.

[168] 231 N.L.R.B. at 365; 98 L.R.R.M. at 1277.

the surrounding circumstances" as required by *National Woodwork* and *Pipefitters*.[169] When a technological innovation is introduced in the workplace, new work may be created and may initially be performed, as in these cases, by employees other than those who worked with the old technology. The crucial question is how best to rationalize the work that results from the innovation into traditional work patterns. As a rule, this cannot be done by ignoring those traditional work patterns when defining the work in controversy. Rather than define a category of work based on work patterns both prior and subsequent to the innovation, the Board has defined the work in controversy specifically in terms of the innovation, thus *by definition* removing any opportunity for pre-innovation workers to preserve their work. Under such a formulation the Supreme Court's work preservation doctrine is sapped of all life.[170]

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[169] 429 U.S. at 524; 386 U.S. at 644.

[170] The Board's definition of the work in controversy in the instant cases stands in vivid contrast to its definition in *Pipefitters*. In the latter case the NLRB held that the provision at issue was a valid work preservation clause, 204 N.L.R.B. at 760, because the clause "was for the purpose of preserving work [that the pipefitters] had traditionally performed." *Id.* That traditional work was the cutting and threading of pipes, a category that, unlike the one chosen in the present cases, takes into account work patterns both prior and subsequent to the innovation. This definition of the work in controversy in *Pipefitters* was not upset by the Supreme Court. 429 U.S. at 521 n.8. Rather, the Court focused primarily on the Board's application of the right to control test. As put by the Court, "The question now before us is whether a union seeking the kind of work traditionally performed by its members at a

There may be cases, of course, in which work engendered by the technological innovation is so different in character from the traditional work that claims based on that traditional work can rightly be discounted, even ignored. But we are not presented with such a case here. The overriding similarities between the traditional work of longshoremen and the work of stuffing and stripping containers are evident.[171] Longshoremen have historically loaded and unloaded ocean-borne cargo, which not only has meant loading the cargo into and out of the hold of the ship, but also has meant sorting the cargo and loading it

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construction site violates § 8(b)(4)(B) when it induces its members to engage in a work stoppage against an employer who does not have control over the assignment of the work sought by the union." *Id.* at 510-511. The right to control test is discussed in the context of the instant cases in text at notes 187-192 *infra.*

[171] Note the expansive language used by the NLRB when it originally certified the longshore unit in the Port of New York:

> All longshore employees engaged *in work pertaining to the* rigging of ships, coaling of same, *loading and unloading of cargoes,* including mail, ships' stores and baggage, handling lines in connection with the docking and undocking of ships, including hatch bosses; cargo repairmen, checkers, clerks and time keepers and their assistants, including head receiving and delivery clerks; general maintenance, mechanical and miscellaneous workers; horse and cattle fitters, grain ceilers, and marine carpenters, in the Port of Greater New York and vicinity * * *.

New York Shipping Ass'n, Inc., 116 N.L.R.B. 1183, 1188 (1956) (emphasis added; footnote omitted).

on to equipment such as pallets.[172] From the longshoremen's standpoint, therefore, containerization merely represents a change in equipment.[173]

Further, the very nature of containers belies any notion that they present work distinctly different from and unrelated to traditional longshoremen's work. As Judge Friendly recently observed in another context, "Stripping a container of goods destined to different consignees is the functional equivalent of sorting cargo discharged from a ship; stuffing a container is part of the loading of the ship even though it is performed on shore and not in the

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[172] *See* text at notes and notes 9, 18, & 43 *supra.*

[173] Although the location of the work has changed as well, in the sense that the stripping and stuffing at controversy here is done off pier, this is not an immutable characteristic of the work; it just as easily could be done on pier. That the NLRB found good reason for containers to be stripped before being trucked—to meet state highway and bridge laws, to better balance the cargo, to use trailer space efficiently (respondent's brief (B-HR) at 8)—is therefore immaterial. The essential stripping need not occur away from the dock. Moreover, the challenged Rules affect only those containers that are to be stripped or stuffed within 50 miles of port; the shift of this work back to the dock is not, therefore, implausible.

It should be noted that use of the new equipment—containers—does not require that ILA labor undergo retraining. But even if it did, this would not perforce mean that efforts to claim work involving the new equipment would be Secondary. *See* Note, *Secondary Boycotts and Work Preservation,* 77 YALE L. J. 1401, 1411 (1968) ("[I]f technological change requires employee retraining, nothing in the primary-secondary rationale justifies forbidding the union to claim and preserve jobs." (footnote omitted)).

ship's cargo holds." [174] The Supreme Court, in affirming Judge Friendly's observations, wrote of containerization: "In effect, the operation of loading and unloading has been moved shoreward; the container is a modern substitute for the hold of the vessel." [175] The correspondence between the shift to containerized shipping and the sharp reduction in employment opportunities for longshoremen bears witness to the wisdom of these observations.[176]

We hold that the NLRB committed reversible legal error by ignoring circumstances crucial to responsible application of the Supreme Court's work preservation doctrine enunciated in *National Woodwork* and *Pipe-*

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[174] *Pittston Stevedoring Corp.* v. *Dellaventura*, 544 F.2d 35, 53 (2d Cir. 1976), *aff'd sub nom. Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249 (1977). This case held that the Longshoremen's and Harbor Workers' Compensation Act covers employees stuffing and stripping containers away from the ships that carried them.

[175] *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 270 (1977), *aff'g Pittston Stevedoring Corp.* v. *Dellaventura*, 544 F.2d 35 (2d Cir. 1976).

[176] *See International Longshoremen's Ass'n*, 221 N.L.R.B. 956, 957 (1975) ("As fewer cargo units reached the piers, there was a proportionate decrease in loading and unloading work for the longeshoremen represented by [the] ILA."); note 10 *supra* (citing two estimates of productivity increases due to containerization); JA(B-HR) 457a (Gleason testimony) (the number of longshore employees and the number of man-hours they have worked have gone down dramatically in recent years). It is useful in this context to point out that the Supreme Court in *National Woodwork* provided as an example of a "surrounding circumstance" "the threat of displacement by the banned product or services." 386 U.S. at 644 n.38.

fitters. If the NLRB cannot, as it has not in these cases, establish that the new work is sufficiently unrelated to the old work to present a clear break with the past, it must not ignore traditional work patterns when defining the work in controversy. In this case proper consideration of the relevant work patterns both prior and subsequent to the advent of containerization might have led to a different categorization for the work in controversy. The loading and unloading of ocean-borne cargo, with its directly related peripheral tasks such as sorting cargo, is an example of one possible categorization.[177] It is the province of the NLRB to settle upon the correct categorization, of course, and we offer no opinion on the proper one. We simply hold that the Board erred as a matter of law by ignoring traditional work patterns when defining the work in controversy.[178]

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[177] It is not difficult to imagine a party unhappy with this court's decision today subjecting that decision to the following exercise in *reductio ad absurdum*: Under the court's ruling, cannot longshoremen literally chase containers around the country, demanding the right to stuff and strip them? There is a short answer: No. Our decision does not radiate beyond the Rules on Containers, which are restricted in terms to a 50-mile area around each port.

[178] In *Conex* the Board argued that the ILA had abandoned any right to the work in controversy due both to its 1959 agreement with the NYSA, *see* text at notes 46-48 *supra*, and to the period of time between the advent of containerization and attempts by the ILA, through the Rules, to secure the work. Even though the Second Circuit affirmed the Board, it disavowed this point's validity. 537 F.2d at 712.

The Board apparently does not rely on this abandonment point in the instant cases, but Chairman Fanning used the

point to justify the fact that he dissented in the Baltimore-Hampton Roads case and concurred in the New York case. In our view the abandonment point is without merit. We break no new ground when we characterize collective bargaining as "a constant and unending dialogue of powers." O. KAHN-FREUND, LABOUR AND THE LAW 15 (2d ed. 1977). As in any dialogue, the most appropriate response cannot always be framed instantaneously. Rather, ideas generally develop over time; the best ideas may indeed require the longest gestation periods. Be that as it may, the crucial point here is that the dialogue over how best to assimilate containerization—and, more particularly, the work of stuffing and stripping containers in the port area—into traditional longshore work patterns has never ceased. As Part I of this opinion demonstrates, the issue of containerization has been a key ingredient in ILA-shipper relations from the moment of its inception to the present.

Further, the abandonment point ignores the possibility of recapturing work that, due to technological innovation or managerial initiative, has temporarily escaped from the bargaining uni[t] *Compare* Note, *Work Recapture Agreements and Secondary Boycotts*, 90 HARV. L. REV. 815 (1977) (arguing for an intermediate category of "work recapture" between the categories of "work preservation" and "work acquisition"), *with Meat & Highway Drivers, Dockmen, etc., Local 710* v. *NLRB*, 335 F.2d 709, 714 (D.C. Cir. 1964) ("Moreover, in the case before us, we have not work acquisition but work recapture.").

A variation on the abandonment theme is offered by intervenor Houff Transfer, Inc. in the Baltimore and Hampton Roads case. Houff argues that the negotiation of the royalty payment provision in the Rules represents a conscious choice on the part of the ILA to accept that payment instead of the work of stuffing and stripping FSL containers. Intervenor's brief at 26 *et seq.* The argument is plausible only to the extent that abandonment took place with respect to FSL containers that go directly to their beneficial owners or to a point outside a 50-mile radius of the ports for stripping. The ILA has consistently proven antagonistic to the idea that any containers can be stripped or stuffed in the port area by other than ILA labor. This hardly amounts to abandonment, the royalty

2. *Whose labor relations?*

National Woodwork instructed us, and *Pipefitters* reinstructed us, that to be classified as work preservation a boycott must be focused on the "labor relations of the contracting employer *vis-à-vis* his own employees." [179] The boycott must not be "tactically calculated to satisfy union objectives elsewhere." [180]

Ever since containerized shipping was first introduced in New York, Baltimore, and Hampton Roads, it has been a hotly debated item between shippers and their associations (CONASA, NYSA, STAB, HRSA, etc.), on the one hand, and the ILA on the other.[181] Indeed, containerization bears primary responsibility for months of work stoppages by ILA members infuriated by actions of shippers with respect to containerization.[182] The Rules on Containers and activities seeking to enforce the Rules are directly traceable to the collective bargaining relationship between the shippers and the ILA and to the efforts of the parties, within the confines of that relationship, to adjust to an extremely thorny industrial issue: technological in-

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payment notwithstanding. For a case where abandonment may have taken place, *see International Longshoremen's & Warehousemen's Union*, 208 N.L.R.B. 994 (1974), *aff'd (mem.)*, 515 F.2d 1018 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 942 (1976).

[179] 386 U.S. at 645; *see* 429 U.S. at 511, 528.

[180] 386 U.S. at 644; *see* 429 U.S. at 511, 528.

[181] *See* Part I *supra*.

[182] *Id.*

novation versus job security. Nowhere has it been established, or even intimated, that the ILA, perhaps with a view to organization, was attempting to focus its boycott on the labor relations of the trucking companies and the consolidators.[183] Those employers were affected by the boycott, to be sure, as were their employees. But we must distinguish between the incidental effects of primary activity, on the one hand, and a secondary purpose on the other. The former are allowable under the national labor laws,[184] and there has been no convincing showing by the NLRB that the latter exists. The challenged boycott unquestionably focused on the "labor relations of the contracting employer *vis-à-vis* his own employees." [185]

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[183] Thus the First Circuit's observation to this effect in *International Longshoremen's Ass'n* v. *NLRB*, 560 F.2d 439, 445 (1st Cir. 1977), is inapposite here.

[184] *National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. 612, 627 (1967) ("however severe the impact of primary activity on neutral employers, it was not thereby transformed into activity with a secondary objective"). Courts of Appeals have consistently followed the rule that a valid work preservation clause does not become illegal because it has a serious impact upon third parties. *See, e.g., Local 742, United Brhd of Carpenters* v. *NLRB*, 444 F.2d 895, 901 (D.C. Cir.), *cert. denied*, 404 U.S. 986 (1971); *American Boiler Manufacturers Ass'n* v. *NLRB*, 404 F.2d 547, 552 (8th Cir. 1968), *cert. denied*, 398 U.S. 960 (1970); *NLRB* v. *Local 28, Sheet Metal Wkrs International Ass'n*, 380 F.2d 827, 830 (2d Cir. 1967).

[185] 386 U.S. at 645.

3. *The effect of the Rules on the legality of union activity*

Under *Pipefitters* a work preservation agreement does not itself immunize secondary activity from the effects of the congressional proscription of secondary boycotts.[186] Neither the NLRB nor this court relies on this thesis, hence this issue is not raised.

4. *The right to control test*

In *Pipefitters* the Supreme Court resolved a dispute among the circuits by affirming the validity of the Board's right to control test as a means of delineating primary activity.[187] Under this test an employer subjected to an industrial sanction by his employees must be able to control the disposition of the work sought by those employees for their activity to be considered primary.[188] The Court held that this test

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[186] 429 U.S. at 514-521.

[187] Four circuits had rejected the right to control test as a departure from *National Woodwork's* instruction to consider "all the surrounding circumstances." 386 U.S. at 644. *See Local 636, United Ass'n of Journeymen* v. *NLRB*, 430 F.2d 906 (D.C. Cir. 1970); *Beacon Castle Square Building Corp.* v. *NLRB*, 406 F.2d 188 (4th Cir. 1969) (dictum); *American Boiler Manufacturers Ass'n* v. *NLRB*, 404 F.2d 556 (8th Cir. 1968), *cert. denied*, 398 U.S. 960 (1970); *NLRB* v. *Local 164, International Brhd of Electrical Wkrs*, 388 F.2d 105 (3d Cir. 1968). The Fourth and Ninth Circuits accepted the test's validity. *Associated General Contractors, Inc.* v. *NLRB*, 514 F.2d 433 (9th Cir. 1975); *George Koch Sons, Inc.* v. *NLRB*, 490 F.2d 323 (4th Cir. 1978).

[188] 429 U.S. at 521.

was an acceptable gloss on the congressional proscription of secondary boycotts.[189]

Ironically, after defending use of this test in circuit after circuit and finally vindicating its use in the highest court in the land, the NLRB's posture in the cases before us is not supported by rational application of the right to control test. CONASA and NYSA shippers—the employers of the boycotting ILA members in these cases, and the coerced employers under *Pipefitters*—controlled the disposition of all the containers at issue.[190] Indeed, according to the Board the Rules reach no containers except those owned or leased by the shippers.[191] Thus when the relevant Container

[189] *Id.* at 514-521.

[190] The Board notes that the Equipment Interchange Agreement used by United States Lines granted truckers "control" over containers in their "custody and possession." 231 N.L.R.B. at 361, 365. As these cases amply demonstrate, however, and as the NLRB itself recognizes, 231 N.L.R.B. at 362-363; 98 L.R.R.M. at 1277, the shipper's power of disposal over the containers is not thereby impaired, as the shipper can simply refuse to release a container to a trucking company or consolidator. We also find this point dispositive of the Board's contentions with respect to the right of consolidators and trucking companies to control the cargo inside the containers. Unless the shippers turn over the containers, as they ultimately chose not to do in the cases before us, this "right" is without substance.

[191] 98 L.R.R.M. at 1277 ("Briefly, these Rules require that *any containers owned or leased* by employer-members [of CONASA] * * *." (emphasis added)). *See* JA(B-HR) 415a. This observation of the NLRB appears to be in conflict both with the terms of the 1974 Rules, *see* Rule 1(a)(1), *reprinted in* Appendix B *infra*, and with its earlier determination in *Conex*, *see* 221 N.L.R.B. at 960. Containers "used" by

Committees found the shippers in violation of the Rules and fined them, the shippers, after unsuccessfully seeking indemnification from the truckers and consolidators, simply refused to supply their containers to the truckers and consolidators so that the Rules would be complied with—that is, so that ILA labor would do the work if the work were to be done. It is difficult to imagine a more forceful demonstration of control.[192]

5. *The substantial evidence standard*

The *Pipefitters* Court made abundantly clear that, under the NLRA,[193] courts reviewing NLRB decisions are bound by the Board's factual findings if supported by substantial evidence on the record considered as a whole.[194] But the salient facts underlying the cases before us are not in dispute. This is the fourth circuit to adjudge the validity of the Rules on Con-

CONASA shippers also come under the Rules. The important points here, however, are that petitioners' contentions that the shippers owned or leased the containers at issue are unrefuted and that, in any event, the shippers clearly had "control" over the disposition of the containers.

[192] Thus, in light both of our preceding discussion on the proper formulation of the work in controversy, *see* text at notes 163-178 *supra*, and of the shippers' control over disposition of containers, the Supreme Court's following characterization in *Pipefitters* is inapplicable to the instant cases: "the union sought to acquire work that it never had and that its employer had no power to give it * * *." 429 U.S. at 530 n.16.

[193] 29 U.S.C. 160(e) (1976).

[194] 429 U.S. at 530-531.

tainers or of action seeking to enforce the Rules, and the factual backgrounds of these cases overlap to a significant degree.[195] As the NLRB forthrightly observed with respect to the instant case arising in Baltimore and Hampton Roads, "[P]etitioners' real complaint is with the Board's analytic framework not its findings of fact," [196] a characterization in which the petitioners heartily concur.[197] And as to the New York case, the Board commented that its

> decision in Conex is controlling. The Conex case involved the identical Respondents [NYSA and ILA] and dealt with the same Rules on Containers. The charging parties in Conex were also consolidating companies engaged in off-pier stripping and stuffing of containers. * * * [198]

In *Conex* Judge Wyzanski, who wrote the majority opinion affirming the NLRB, stated that "[t]here is no dispute as to the objective facts in this case." [199]

Like the petitioners and the other circuits, this

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[195] *See* text at notes 133-159 *supra*. Also, the District Court's decision in *Consolidated Express, Inc.* v. *New York Shipping Ass'n*, 452 F.Supp. 1024 (D. N.J. 1977), has been the subject of an interlocutory appeal to the Third Circuit, —— F.2d —— (3d Cir. Nos. 78-1529 & 78-1530, decided April 16, 1979), *aff'g in part & rev'g in part* 452 F.Supp. 1024.

[196] Respondent's brief (B-HR) at 34 n.20.

[197] *See, e.g.*, petitioner's (CONASA) reply brief (B-HR) at 2.

[198] 98 L.R.R.M. at 1277.

[199] 537 F.2d at 708.

court has no dispute with the Board's factual findings. Rather, our conflict with the NLRB is exclusively focused on the Board's misinterpretation and misapplication of the prevailing law—the doctrine of work preservation.[200] The Supreme Court has consistently maintained that NLRB rulings should not be sustained by reviewing courts where those rulings rest on "erroneou legal foundations." [201] The NLRB's decisions before us are of such a character, and thus reversal is warranted.[202]

III. Conclusion: Containerization and the National Labor Policy

The relationship between the ILA and CONASA shippers has been under continual strain over the past two decades due to containerization.[203] Their relationship has survived prolonged negotiations, presidential intervention, and the occasional use of econ-

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[200] *See* text at notes 105-132 *supra*.

[201] *NLRB* v. *Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956); *see NLRB* v. *Brown*, 380 U.S. 278, 290-292 (1965).

[202] In Nos. 77-1735 and 77-1758 intervenor Houff Transfer, Inc. maintains that, because these cases focus on FSL containers while *Conex* (and No. 78-1510) focuses on CFCL, LTL, and LCL containers, the respective factual backgrounds are distinguishable. Intervenor's brief at 37-40. However, because we find that the Board committed an error of law in both the New York and the Baltimore-Hampton Roads cases, Houff's argument is not relevant.

[203] *See* Part I *supra*.

omic force.[204] The result of their efforts is the Rules on Containers. These Rules represent a reasoned response to the difficult problem of technological innovation and are an exemplar of the self-government contemplated by Congress when it left the bulk of industrial problems to be resolved in the private sector.[205] The Rules seek neither to stymie technological innovation nor to introduce manual labor in situations where the work otherwise would be handled by more efficient mechanized means;[206] rather, the Rules

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[204] *Id.* It hardly requires mention that use of economic force in collective bargaining is fully within the contemplation of the national labor laws. In *NLRB* v. *Insurance Agents International Union*, 361 U.S. 477, 489 (1960), the Supreme Court stated, "The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized." *See NLRB* v. *Burns International Security Services, Inc.*, 406 U.S. 272, 287 (1972) ("Preventing industrial strife is an important aim of federal labor legislation, but Congress has not chosen to make the bargaining freedom of employers and unions totally subordinate to this goal. When a bargaining impasse is reached, strikes and lockouts may occur."); *Air Line Pilots Ass'n International* v. *CAB*, 502 F.2d 453, 456 (D.C. Cir. 1974), *cert. denied*, 420 U.S. 972 (1975) (national labor policy rests upon the principle that parties are free to marshal economic resources in resolution of labor disputes, consistent with the rights and prohibitions of labor statutes).

[205] *See generally* Shulman, *Reason, Contract, and Law in Labor Relations*, 68 HARV. L. REV. 999 (1955).

[206] Containers that were not stuffed and stripped in compliance with the Rules, however, have been, and doubtless in the future will be, subjected to duplicate stuffing and stripping by ILA labor. Consider one commentator's characterization

intend to secure for ILA labor any stripping and stuffing of containers that is to be performed within 50 miles of port by other than the employees of the cargo's beneficial owner. Courts and the NLRB must take great care not to disturb the parties' reasoned attempts at self-governance unless those attempts contravene the law. For the reasons stated in this opinion, we believe that the NLRB has failed to demonstrate that the Rules on Containers and action seeking to enforce the Rules are in contravention of the law. Accordingly, the NLRB's decisions in these cases are vacated, and its cross-applications for enforcement are denied. We remand to the NLRB for any further proceedings it deems appropriate.

So ordered.

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of ILA behavior that in the past has slowed the rate of innovation:

> There is reason to believe, or at the very least the question must remain open, that the optimum rate in which labor-saving technology is introduced is not the fastest possible rate. To the extent that this is true, union impediments may be considered as not merely obstacles to progress, but as efforts to buy time in which the human costs of change can be softened and made more tolerable.

Ross, *supra* note 7, 7, 21 LAB. L. J. at 419.

APPENDIX A

1968 Hampton Roads Rules on Containers

I. CONTAINERIZATION

Containers owned or leased by Employer-signatory members (including containers on wheels) containing LTL loads or consolidated full-container loads, which are destined for or come from, any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo, and which either come from or is destined to any point within a 50-mile radius from the center of any North Atlantic District port, shall be stuffed and stripped by ILA longshore labor at longshore rates on a waterfront facility under the terms and conditions of the General Cargo Agreement. (Rules on Containers are listed below.)

II. RULES ON CONTAINERS

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts at deepsea piers or terminals. To assure compliance with the collective bargaining provisions the following rules and regulations shall be applied.

A. Definitions and Rule as to Containers Covered

Stuffing—means the act of placing cargo into a container

Stripping—means the act of removing cargo from a container

Loading—means the act of placing containers aboard a vessel

Discharging—means the act of removing containers from a vessel.

These provisions relate solely to containers meeting each and all of the following criteria:

1. Containers owned or leased by employer-signatory members (including containers on wheels) which contain LTL loads or consolidated full container loads.

2. Such containers which come from or go to any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarded, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo.

3. Such containers which come from or go to any point within a geograpical area of any port in the North Atlantic District described by a 50-mile circle within its radius extending out from the center of each port. It is understood that the center of Hampton Roads will be defined as Middle Ground Light.

B. Rule of Stripping and Stuffing Applied to Such Containers

A container which comes within each and all of the criteria set forth in "A" above shall be stuffed and

stripped by ILA longshore labor. Such ILA labor shall be paid and employed at longshore rates under the terms and conditions of the General Cargo Agreement. Such stuffing and stripping shall be performed on a waterfront facility, pier or dock. No container of cargo shall be stuffed or stripped by ILA longshore labor more than once. Notwithstanding the above provisions, LTL loads or consolidated container loads of mail, of household goods with no other type of cargo in the container, and of personal effects of military personnel shall be exempt from the rule of stripping and stuffing.

C. Rules on No Avoidance or Evasion

The above rules are intended to be fairly and reasonably applied by the parties. To obtain non-discriminatory and fair implementation of the above, the following principles shall apply.

1. Agreement in the Port as to the geographic area as provided in "A (3)" is based on present LTL movement patters in the port. Should any person, firm or corporation, for the purpose of evading the provisions of "B" hereof, seek to change such pattern by shifting its operations to, or commencing new operations at, a point outside agreed-upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of "B", then said point shall be deemed to be within the said geographic area for the purpose of these rules.

2. Containers owned or leased by companies which are affiliated either directly or through a holding company with an employer-member shall be deemed to be containers owned or leased by employer-members. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the employer-member, its parent, or stockholders of either of them.

3. It shall be the obligation of employer-members to clearly mark each container's documentation as to whether or not it is an "A" container which is to be stuffed and stripped at the waterfront facility (pier or dock).

4. Each employer-member shall keep records of each container supplied to a consolidator or other non-owner of cargo, located within the agreed geographic area, and such record shall be available to the Committee provided in (7) below. With respect to all containers received at or delivered from the vessel, a record of the same shall be made by ILA Checkers or Clerks.

5. Failure to stuff or strip a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of "B" shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been stuffed or stripped under the rules then the steamship carrier found guilty of intent to cause improper, fictitious, or incorrect documentation to evade the provisions of "B" above shall pay to the

joint Welfare Fund $150.00 per container which should have been stuffed or stripped.

6. If any shippers or their agents who have at any time used, are now using, or in the future use containers owned or leased by employer-members, hereafter use containers not owned or leased by employer-members, for the purpose of evading the provisions of "B" hereof, then the containers so used shall be considered to be within "A" and "B".

7. A committee represented equally by management and Union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by "C (8)" hereof.

8. If the purpose of protecting and preserving the present work jurisdiction of longshoremen and all other deepsea ILA crafts over any containers loaded with LTL cargo, or consolidated full container loads as defined herein is not accomplished by the provisions of these rules on containers, then either party shall have the right to renegotiate these provisions or any part thereof by giving notice to the other party. This provision shall not be subject to arbitration. Pending renegotiation and settlement of the given dispute, the employees may decline to work the specific containers involved in the dispute and such refusal to work shall not be subject to arbitration. The renegotiation referred to above will not be subject to arbitration. Interpretation of this provision shall not be determined by an arbitrator but by a court of competent jurisdiction.

APPENDIX B

1974 Rules on Containers

CONASA-ILA RULES ON CONTAINERS

PREAMBLE

This Agreement made and entered into by and between the carrier and direct employer members of the CONASA Port Associations (hereinafter referred to collectively as "CONASA") and the International Longshoremen's Association, AFL-CIO ("ILA"), its Atlantic Coast District ("ACD") and its affiliated local unions in each CONASA port ("locals") covers all container work as a waterfront facility which includes but is not limited to the receiving and delivery of cargo, the loading and discharging of said cargo into and out of containers, the maintenance of containers, and the loading and discharging of containers on and off ships.

CONASA agrees that it will not directly perform work done on a container waterfront facility (as hereinafter defined) or contract out such work which historically and regularly has been & currently is performed by employees covered by CONASA-ILA Agreements, including CONASA-ILA craft agreements, unless such work on such container waterfront facility is performed by employees covered by CONASA-ILA Agreements.

RULES

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen

and all other ILA crafts which was performed at deepsea waterfront facilities. These rules do not have any effect on work which historically was not performed at a waterfront facility by deepsea ILA labor. To assure compliance with the collective bargaining provisions, the following rules and regulations shall be applied uniformly in all CONASA Ports to all imports or export cargo in containers:

Definitions

(a) Loading a Container—means the act of placing cargo into a container.

(b) Discharging a Container—means the act of removing cargo from a container.

(c) Loading Containers on a vessel—means the act of placing containers aboard a vessel.

(d) Discharging Containers from a vessel—means the act of removing containers from a vessel.

(e) Waterfront facility—means a pier or dock where vessels are normally worked including a container compound operated by a carrier or direct employer.

(f) Qualified Shipper—means the manufacturer or seller having a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the export cargo being transported and who is named in the dock/cargo receipt.

(g) Qualified Consignee—Means the purchaser or one who otherwise has a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the import cargo be-

ing transported and who is named in the delivery order.

(h) Consolidated Container Load—means a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo.

Rule 1—Containers To Be Loaded or Discharged by Deepsea ILA Labor

(a) Cargo in containers referred to below shall be loaded into or discharged out of containers only at a waterfront facility by deepsea ILA labor:

(1) Containers owned, leased or used by carriers (including containers on wheels and trailers), hereinafter "containers", which contain consolidated container loads, which come from or go to any point within a geographic area of any CONASA port described by a 50-mile circle with its radius extending out from the center of each port. (hereinafter "geographic area") or

(2) Containers which come from a single shipper which is not the manufacturer ("manufacturer's label") into which the cargo has been loaded (consolidated) by other than its own employees and such containers come from any point within the "geographic area," or

(3) Containers designated for a single consignee from which the cargo is discharged (deconsolidated) by other than its own employees within the "geographic area" and which is not warehoused in accordance with Rule 2(B).

(b) Such ILA labor shall be paid and employed at deep-sea longshore rates under the terms and conditions of the deep-sea ILA labor agreement in each CONASA port, including the provisions for all fringe benefits and any and all other benefits receivable by deep-sea ILA craft workers in each such Port. No cargo shall be loaded into or discharged out of any container by ILA deep-sea labor more than once.

(c) All export consolidated cargo, described in 1 (a) (1) and (2) above, shall be received at the waterfront facility by deep-sea ILA labor and such cargo shall be loaded into a container at the waterfront facility for loading aboard ship.

(d) All import consolidated cargo, described in 1 (a) (1) and (3) above, shall be discharged from the container and the cargo placed on the waterfront facility where it will be delivered and picked up by each consignee.

(e) No carrier or direct employee shall supply its containers to any consolidator or de-consolidator. No carrier or direct employer shall operate a facility in violation of the Rules on Containers which specifically require that all Rule 1 Containers be loaded or discharged at a waterfront facility.

Rule 2—Containers Not to be Loaded or Discharged by ILA Labor

Cargo in containers referred to below shall not be loaded or discharged by ILA labor:

A. Export Cargo:

(1) All cargo loaded in containers outside the "geographic area".

(2) Containers loaded with cargo at a qualified shipper's facility with its own employees.

(3) Containers loaded with the cargo of a single manufacturer (manufacturer's label).

(4) Consolidated container loads of mail, household effects of a person who is relocating his place of residence, with no other type of cargo in the container, or personal effects of military personnel.

B. Import Cargo;

(1) All cargo discharged from containers outside the "geographic area".

(2) Containers discharged at a qualified consignee's facility by its own employees.

(3) Consolidated container loads of mail, household effects of a person who is relocating his place of business, with no other type of cargo in the container, or personal effects of military personnel.

(4) Containers of a qualified consignee discharged at a bona fide public warehouse within the "geographic area" which comply with all of the following conditions.

1. The container cargo is warehoused at a bona fide public warehouse.

2. The qualified consignee pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days, and;

3. The cargo being warehoused (a) in the normal course of the business of the qualified consignee; (b) title to such goods has not been

transferred from the qualified consignee to another.

The carrier on request will furnish all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2 and 3 have been met. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1. It is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a consolidator or de-consolidator.

Rule 3—Batching

When an employer-member or carrier uses a trucker to remove or deliver containers in batches, or in substantial number, from or to a terminal to another place of rest (outside of its terminal) where containers are stored pending their delivery to a consignee (or after being received from a shipper and while waiting the arrival of a ship), for the purpose of reducing the work jurisdiction of the ILA or any of its crafts, such use is deemed to be batching and an evasion of these Rules in violation of the CONASA-ILA contract.

Rule 4—Headload

Where a single qualified shipper sends an export container which contains all of his own cargo to a waterfront facility and such container is not full, the carrier or direct employer may load this container

with additional cargo at the waterfront facility. On import cargo, the carrier or direct employer may discharge any such additional cargo and send the remaining cargo in the container to the qualified consignee. The loading or discharging of cargo at ILA ports shall be performed at a waterfront facility by deepsea ILA labor.

Rule 5—Overland Movement of Containers from CONASA Port to Non-CONASA Port

If a carrier moves containers from a CONASA Port to a non-CONASA Port for the purpose of evading the Rules on Containers, the carrier is in violation of the CONASA-ILA Agreement. If the cargo is being moved to a non-CONASA-ILA Port in the normal course of business, and not for the purpose of evasion, then such movement is no a violation.

Rule 6—Importers Advertising Evasion of Rules

The circulation, in writing, by importers of methods developed by them to evade the Rules on Containers by issuing single bills of lading on what are in fact consolidated container loads shall be deemed a violation and all CONASA-ILA Container Committees shall be advised to stop such evasion at the waterfront facilities.

Rule 7—No Avoidance or Evasion

The above rules are intended to be fairly and reasonably applied by the parties. To obtain non-dis-

criminatory and fair implementation of the above, the following principles shall apply:

(a) Geographic Area—Agreement in the Port to the geographic area as provided in Rule 1 is based on present consolidated movement patterns in the port. Should any person, firm or corporation for the purpose of evading the provisions of the Rules on Containers, seek to change such pattern by shifting its operations to, or commencing new operations at, a point outside said agreed upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of the Rules on Containers, then said point shall be deemed to be within the said geographic area for the purpose of these rules.

(b) Containers Owned, Leased or Used—Containers owned, leased or used by companies which are affiliated either directly or through a holding company with a carrier or a direct employer shall be deemed to be containers owned, leased or used by a carrier or direct employer. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the carrier or direct employer, its parent, or stockholders of either of them.

(c) Liquidated Damages—Failure to load or discharge a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions

of Rule 1 and Rule 2 shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been loaded or discharged under the Rules, then the carrier or its agent or direct employer shall pay, to the joint Container Royalty Fund, liquidated damages of $1,000 per container which should have been loaded or discharged. If any carrier does not pay liquidated damages within 30 days after exhausting its right to appeal the imposition of liquidated damages to the Committee provided in Rule 9(a) below, the ILA shall have the right to stop working such carrier's containers until such damages are paid.

(d) Any facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility.

Rule 8—Renegotiation and Cancellation—

No Arbitration

These Rules shall be in effect for the term of the CONASA-ILA Agreement, provided, however, that either party shall have the right to cancel the Rules on Containers at any time on or after December 1, 1974, on thirty (30) days written notice of a desire to renegotiate the provisions of these Rules. Negotiations shall be held during such thirty (30) day period and if the parties are unable to agree by the end of such period, these Rules shall be deemed cancelled. Thereafter, the ILA shall have the right to refuse to

handle containers and CONASA shall have the right to refuse to hire employees under the said Rules. The negotiations referred to above shall, under no condition, be subject to the grievance or abritration provisions of any CONASA-ILA Agreement.

Rule 9—Enforcement of the Rules on Containers

To assure effective, fair and non-discriminatory enforcement of the above Rules, the following regulations shall apply:

(a) A Committee in each CONASA port represented equally by management and union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these Rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by Rule 8 hereof. A joint committee, known as the CONASA-ILA Container Committee, represented equally by management and labor and made up of representatives (to be mutually agreed upon) from each CONASA Port, namely, Boston, Rhode Island, New York, Philadelphia, Baltimore and Hampton Roads shall meet at least quarterly each year for the purpose of insuring uniformity in the interpretation of these Rules.

(b) A Committee of carriers, together with CONASA-ILA Container Committee will develop uniform documentation which shall be required to be prepared and maintained by all carriers in order to readily identify all Rule 1 containers which are subject to loading or discharging by deepsea ILA labor. It shall be the obligation of

employer-members to clearly mark each container's documentation as to whether or not it is a Rule 1 container, which shall be loaded or discharged. If a container's documentation is not clearly marked, it shall be deemed a Rule 1 container and it shall be loaded or discharged by deepsea ILA labor at the waterfront facility. With respect to all containers received at or delivered from the waterfront facility, a record of the same shall be made by ILA Checkers or Clerks. All carriers will distribute to all other carriers any and all information and devices which are being used by any person to circumvent the Rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate CONASA-ILA Container Committee and to the policing agency provided in (e) below in its port.

(c) Every import container destined to a point within 50-miles of a CONASA Port shall be delivered only on a delivery order. Every export container coming from a point within 50-miles of a CONASA Port shall be received only on a dock/cargo receipt. Such delivery orders and dock/cargo receipts shall certify the place of delivery and origin of the container, the name or names of the person to whom the cargo is being delivered and from which it is shipped, the identity of the owner of the cargo, weight of the cargo, identity of the cargo and the origin and final destination of the container. Copies of such delivery orders and dock/cargo receipts shall be available to the local port Container Committee

and the policing agency provided for in (e) below.

(d) The Container Committee in each CONASA Port shall promulgate to all carriers and direct employers, and to the Container Committees in each CONASA Port, any and all interpretations of the Rules on Containers as and when they are made. This will include uniform interpretations as and when they are issued. The CONASA-ILA Container Committee shall also promulgate uniform interpretations to local port Container Committees, as and when they are issued.

(e) Policing Agency—Each CONASA Port shall establish a method of policing and enforcing these Rules on a uniform and non-discriminatory basis. No such method shall be implemented until presented to and approved by the joint CONASA-ILA Container Committee.

Rule 10—Container Royalty Payments

The two Container Royalty payments required by the CONASA-ILA collective bargaining agreements shall be payable only once in the Continental United States. They shall be paid in that ILA Port where the container is first handled by ILA longshore labor at longshore rates. The second container royalty payment (provided by paragraph 6 of the 1971-1974 CONASA-ILA Memorandum of Agreement) shall be continued and shall be used for fringe benefit purposes only, other than supplemental cash benefits, which purposes are to be determined locally on a port by port basis. Containers originating at a foreign

port which are transshipped at a United States port for ultimate destination to another foreign port ("foreign sea-to-foreign-sea containers") are exempt from the payment of container royalties.

ROBB, *Circuit Judge, dissenting*: The keystone of the majority opinion is the assertion that the Board erred by failing to consider "all the surrounding circumstances", and in particular by ignoring the "traditional work patterns" of longshoremen. Proper consideration of the "relevant work patterns", says the majority, "would have led to a different categorization for the work in controversy." I do not agree. In my judgment the Board gave proper consideration to the surrounding circumstances, including the traditional work patterns of longshoremen; and I think the Board reached the right result.

In the Baltimore-Hampton Roads case, 231 N.L.R.B. 351 (1972) the Board affirmed the finding of the Administrative Law Judge that

> [T]he history of the longshoremen's work tradition in Baltimore and Hampton Roads shows that their role in handling break-bulk import cargo ended at the head of the pier, where an ILA freight handler picked up the cargo and loaded it onto a truck. Thereafter, the fate of that cargo was the responsibility of the motor carrier, as set forth in the bill of lading.
>
> The advent of containerization in the ports of Baltimore and Hampton Roads did not change the traditional role of the ILA longshoremen.

> The motor carriers have treated import shippers' loads destined for consignees located more than 50 miles from the center of the port of entry much as they did break-bulk cargo. For, with very rare exceptions, motor carriers have freely picked up the steamship company's containers mounted on wheeled trailers and hauled them to the consignee in accordance with the bills of lading. The motor carriers have also traditionally hauled such containers to their own truck terminals and have stripped the shippers' loads from them and are loaded into their own trailers, using truck terminal employees, whenever considerations of state regulation, safety, or economy persuaded a motor carrier to take that precaution.

Id. at 365.

In the New York case the Board held that "traditionally the off-pier stuffing and stripping of containers was performed by consolidating companies and not longshoremen. Since the work was not traditional longshore work and had never been performed by longshoremen, the Rules which require the shipping companies to stop doing business with consolidators did not have a lawful work-preservation object." (J.A. 66a) The Board referred to *International Longshoremen's Ass'n,* (*Conex*) 221 N.L.R.B. 956 (1975), *enf'd* 537 F.2d 706 (2d Cir. 1976), *cert. denied,* 429 U.S. 1041, *rehear. denied,* 430 U.S. 911 (1977). In the *Conex* case, which the Board in our case held was controlling, the Board found:

> The traditional work of the longshoremen represented by ILA has been to load and unload ships. When necessary to perform their loading and unloading work, longshoremen have been required to stuff and strip containers on the piers.
>
> Similarly, for many years, maritime cargo has been sorted and consolidated off the docks by companies employing teamsters and unrepresented employees. With the advent of vessels designed exclusively to carry the large containers presently in use, these consolidating companies, such as Consolidated and Twin, have continued to consolidate shipments into containers prior to their placement aboard the vessels. The consolidators generate such work themselves, performing it not on behalf of the employer-members of NYSA but for their own customers who have goods to ship. Furthermore, they perform this consolidation work at their own off-pier premises, with their own employees who are outside the unit represented by ILA, and who fall within the coverage of separate collective-bargaining agreements, under which they are represented by other labor organizations. It is clear, therefore, that Consolidated and Twin have traditionally been engaged in the work of stuffing and stripping containers such as are here in controversy.
>
> From the foregoing and the record as a whole, it is clear that the on-pier stripping and stuffing work performed by longshoremen as an incident of loading and unloading ships does not embrace the work traditionally performed by Consolidated and Twin at their own off-pier premises. It does not fall within ILA's traditional role to engage

> in make-work measures by insisting upon stripping and stuffing cargo merely because that cargo was originally containerized by nonunit personnel. Yet, ILA's demands here could only be met if the work traditionally performed off the pier by employees outside the longshoremen unit were taken over and performed at the pier by longshoremen represented by ILA.

Id. at 959-60. [Footnote omitted]

There is substantial evidence in the records of both the Baltimore-Hampton Roads case and the New York case to support the Board's finding that the traditional work of longshoremen does not include the work traditionally performed by motor carriers in stripping and stuffing containers. As the Board said the traditional work of longshoremen has been to load and unload ships, and there is substantial evidence that traditionally longshoremen have not stuffed and stripped containers on the pier or elsewhere. Any stuffing or stripping by longshoremen has been only incidental.

I am not impressed by the fiction that a container is part of the hold of a ship; if it is, then so is any large box in the hold of a ship. Nor am I persuaded by the "similarities" which the majority perceive between the work of loading and unloading ships and the work of filling and emptying containers. The question is not whether there may be similarities in the work entailed in the two operations. Rather, the question is, who traditionally has done that work.

In my opinion the longshoremen are attempting to acquire work they have never had, therefore the defense of work preservation must be rejected. My conclusion is fortified by the decisions of three circuit courts of appeals. *International Longshoremen's Ass'n* v. *NLRB*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041, *rehear. denied*, 430 U.S. 911 (1977); *International Longshoremen's Ass'n Local 1575* v. *NLRB*, 560 F.2d 439 (1st Cir. 1977); *Humphrey* v. *International Longshoremen's Ass'n*, 548 F.2d 494, 499-500 (4th Cir. 1977); *see International Longshoremen's & Warehousemen's Union Local 13*, 208 N.L.R.B. 994 (1974), which this court enforced *per curiam* without an opinion, 169 U.S. App. D.C. 300, 515 F.2d 1017 (1975), *cert. denied*, 424 U.S. 942 (1976).

I would deny the petitions for review and enforce the Board's orders.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1978

[Filed Sep. 25, 1979]

No. 77-1735

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 77-1758

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

HOUFF TRANSFER, INC., INTERVENOR

No. 78-1510

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND NEW YORK SHIPPING ASSOCIATION, INC., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

PETITIONS TO REVIEW AND CROSS-APPLICATIONS TO ENFORCE ORDERS OF THE NATIONAL LABOR RELATIONS BOARD

Before: WRIGHT, Chief Judge, and ROBINSON and ROBB, Circuit Judges

JUDGMENT

These causes came on to be heard on petitions to review and cross-applications to enforce orders of the National Labor Relations Board and were argued by counsel. On consideration thereof, it is

ORDERED AND ADJUDGED, by this Court, that the petitions for review are granted; the orders of the National Labor Relations Board on review herein are set aside; and the Board's cross-applications for

enforcement are hereby denied, all in accordance with the opinion of this Court filed herein this date.

Per Curiam

For the Court:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Date: September 25, 1979

Opinion for the court filed by Chief Judge WRIGHT.

Dissenting opinion filed by Circuit Judge ROBB.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1979

[Filed Dec. 13, 1979]

No. 77-1735

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
And Consolidated Case No. 77-1758

Before: WRIGHT, Chief Judge; MCGOWAN, TAMM, LEVENTHAL,* ROBINSON, MACKINNON, ROBB, WILKEY, WALD, and MIKVA, Circuit Judges

ORDER

The suggestion for rehearing *en banc* filed by respondent Board having been transmitted to the full Court and a majority of the judges in regular active service not having voted in favor thereof, it is

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* Circuit Judge Leventhal considered this matter but died before the order issued.

ORDERED, by the Court, *en banc*, that respondent's aforesaid suggestion for rehearing *en banc* is denied.

Per Curiam

FOR THE COURT:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Circuit Judges Tamm, MacKinnon, Robb, and Wilkey would grant respondent's suggestion for rehearing *en banc*.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1979

[Filed Dec. 13, 1979]

No. 77-1735

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
And Consolidated Case No. 77-1758

Before: WRIGHT, Chief Judge; ROBINSON and ROBB, Circuit Judges

ORDER

Upon consideration of respondent's (Board) petition for rehearing, it is

ORDERED, by the Court, that respondent's aforesaid petition for rehearing is denied.

Per Curiam

FOR THE COURT:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

APPENDIX D

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

DECISION AND ORDER

Upon charges duly filed by Dolphin Forwarding, Inc. (Dolphin), and San Juan Freight Forwarders, Inc. (San Juan), against the International Longshoremen's Association (ILA) and the New York Shipping Association, Inc. (NYSA), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, on March 10, 1976, issued and served on the parties an order consolidating cases, consolidated complaint, and notice of hearing.

The complaint alleges that the ILA has threatened, coerced, and restrained NYSA and its employer-members to cease doing business with Dolphin and San Juan, in violation of Section 8(b)(4)(ii)(B) and Section 8(e) of the Act by maintaining, giving

effect to, and enforcing certain contracts and agreements between them with respect to the business operations of the Charging Parties.

The Respondents in their answers set forth various affirmative defenses. The General Counsel moved to strike. Administrative Law Judge Henry J. Jalette granted the General Counsel's motion. A hearing was begun and the Administrative Law Judge refused to hear evidence concerning these defenses.

Thereafter the parties entered into a stipulation and moved to transfer this proceeding directly to the Board for findings of fact, ruling on exceptions to rulings on motions, objections and offers of proof, conclusions of law, and the issuance of a decision and order. The parties waived the making of findings of fact and conclusions of law and issuance of a decision by the Administrative Law Judge. The parties also agreed that the charges, consolidated and amended complaints, notice of hearing, answers and amended answers, transcript, motions and rulings thereon, and exhibits and rejected exhibits constitute the entitre record in this proceeding.

By order dated January 4, 1978, the Board approved the stipulation and transferred the proceedings to itself. All parties filed briefs and the General Counsel filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the stipulation, the

briefs, and the entire record and hereby makes the following:

Findings of Fact

I. Jurisdiction

Dolphin maintains its principal office and place of business in Hanover, Massachusetts. San Juan's office and principal place of business, on the mainland of the United States, is located in New York City. Both have used inland facilities located within a 50-mile radius of the Port of New York. In the operation of their businesses, Dolphin and San Juan, respectively, annually derive gross revenues in excess of $500,000, of which more than $50,000 is derived from shipments in interstate commerce directly from various States of the United States to the Commonwealth of Puerto Rico.

Respondent NYSA has its principal office in New York City and is an incorporated association of employer-members who are engaged in various operations involved in the shipment of general cargo between the Port of New York and foreign countries or other States and territories of the United States. Employer-members of NYSA annually carry cargo in interstate and foreign commerce valued in excess of $1 million. Dolphin, San Juan, and NYSA are engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find it will effectuate the purposes of the Act to assert jurisdiction herein.

II. The Unfair Labor Practices

A. *Background* [1]

Dolphin and San Juan both consolidate goods from various customers for seaborne shipment by container. Steamship companies provide them with containers. They in turn solicit customers who wish to ship less-than-container-load cargo between the Port of New York and Puerto Rico. The customer transports the goods to the consolidator's facility, where they are consolidated with those of other customers and stuffed into containers. The consolidator transports the containers to the steamship companies' vessels for shipment to Puerto Rico. Both Charging Parties lease the necessary space and subcontract the labor in order to perform the consolidation.

Since 1959, NYSA and ILA have negotiated various collective-bargaining agreements and supplements regarding the use and handling of containers, known as the Rules on Containers. Briefly, these Rules require that any containers owned or leased by employer-members which contain less than trailer load, or consolidated full container loads, that originate or terminate within a 50-mile radius of the Port of New York must be "stripped" and "stuffed" by ILA

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[1] For a comprehensive discussion of containerization, consolidation, NYSA and ILA bargaining history, and the resultant Rules on Containers see *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc.)*, 221 NLRB 956 (1975), enfd. 537 F.2d 706 (C.A. 2, 1976), cert. denied 429 U.S. 1041 (1977), rehearing denied 430 U.S. 911 (1977) (herein *Conex*).

labor. Employer-members agree not to supply containers to consolidators who fail to comply, and each violation is punishable by a fine of $1,000 per container.

The Charging Parties have always used facilities located within 50 miles of the port to strip and stuff containers. Neither has used ILA labor.[2] Beginning on August 27, 1974, and continuing through January 23, 1975, Respondents, through their agents, fined the steamship companies used by the Charging Parties approximately $47,000. The fines were levied because of the Charging Parties' failure to comply with the Rules. Consequently, the steamship companies involved informed the Charging Parties that they would no longer furnish them containers or space aboard their vessels. Dolphin and San Juan moved their operations to Jacksonville, Florida, a port not subject to the Rules, and filed the charges in this proceeding.

B. *Analysis and Findings*

We find, based on the record as a whole, that Respondent ILA violated Section 8(b)(4)(ii)(B) and Respondents ILA and NYSA violated Section 8(e) of the Act. It is clear that our decision in *Conex* is controlling. The *Conex* case involved the identical Respondents and dealt with the same Rules on Containers. The charging parties in *Conex* were also consolidating companies engaged in off-pier stripping

[2] During 1973 and 1974 San Juan did have 80 percent of its containers emptied and reloaded upon arrival at the pier by ILA labor.

and stuffing of containers. In that case we held that the Rules were not valid work-preservation clauses in that traditionally the off-pier stuffing and stripping of containers was performed by consolidating companies and not longshoremen. Since the work was not traditional longshore work and had never been performed by longshoremen, the Rules which required the shipping companies to stop doing business with consolidators did not have a lawful work-preservation object. Therefore the Rules and the enforcement thereof violated Sections 8(a)(4)(ii)(B) and 8(e). No legal distinction can be drawn between *Conex* and this case and the few factual differences are without significance.[3]

Accordingly we reject the affirmative defenses raised by Respondents, which in effect are nothing more than motions for reconsideration of our decision in *Conex*. However, Respondents have raised certain defenses with which we did not deal in *Conex;* these we now address:

1. *Dolphin and San Juan were subcontractors of the steamship companies:* Respondents contend that there is some form of subcontractual relationship, albeit a nebulous one, between the Charging Parties and the steamship companies. The object of this relationship was to circumvent the Rules on Containers.

[3] Here, unlike the charging parties in *Conex,* Dolphin and San Juan have never used their own employees to strip and stuff containers. Also, while the charging parties in *Conex* did, at various times, have their containers stripped and restuffed at the pier, it does not appear this was done as extensively as it has been by San Juan.

There is no evidence in the record to lend the slightest credence to this contention. The testimony of the Charging Parties' officers is that they are exactly what they hold themselves out to be—independent consolidators. Both solicit customers and maintain offices. The only relationship they have with the steamship companies is limited to use of their containers and purchase of space aboard their vessels. We therefore find this defense without merit.

2. *The 8(e) charge is time barred:* Respondents contend that Dolphin voluntarily ceased shipments through the Port of New York in December 1974. Dolphin filed the charge alleging an 8(e) violation on May 6, 1975. Therefore, Respondents submit that there could be attempted enforcement of the rules against Dolphin once they left New York, hence the charge filed in May is time barred by the 6-month statute of limitations contained in Section 10(b) of the Act.

Respondents have not denied that the last enforcement or reaffirmation of the Rules occurred on January 23, 1975, well within the 10(b) period.[4] It is the date of reaffirmation of the 8(e) contract that is relevant; consequently, when Dolphin moved its operations to Florida is of no moment.[5]

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[4] *International Organization of Masters, Mates and Pilots, AFL-CIO (Seatrain Lines, Inc.)*, 220 NLRB 164 (1975).

[5] ILA additionally argues that, because the Rules, in one form or another, have been in effect since 1959, the Charging Parties are estopped from raising their validity. The fact remains that, at least regarding the Charging Parties, they were only recently enforced.

3. *I.C.C. permits:* Respondents argue that the Charging Parties are conducting business without being properly licensed by the Interstate Commerce Commission, and, therefore, are not entitled to avail themselves of the Board's processes. That contention is irrelevant. It is our duty to administer the National Labor Relations Act. In that regard we have made the requisite jurisdictional findings. There is no indication that the Rules were intended to, or do, protect the parties from the effect of any violations of other statutes or that enforcement of the National Labor Relations Act, in this context, conflicts with enforcement of any regulations or laws administered by other agencies. In any event, Respondents' recourse properly would be through such other agency, not actions unlawful under the National Labor Relations Act.

C. *Conclusions*

We find that the purpose of the Rules on Containers was to force or require employer-members of NYSA to cease or refrain from handling, transporting, or selling cargo space to consolidators who refused to use ILA labor to perform consolidation. Therefore we find that by maintaining, giving effect to, and enforcing the contracts and agreements known as the Rules on Containers, as set forth in the memorandum of understanding, executed on or about June 21, 1974, Respondent NYSA and Respondent ILA violated Section 8(e) of the Act.

We also find that Respondent ILA by fining the steamship companies, in accordance with the Rules on Containers, threatened, restrained, and coerced Respondent NYSA and its employer-members to force those persons engaged in commerce to cease doing business with Dolphin and San Juan, and thereby violated Section 8(a)(4)(ii)(B) of the Act.

III. The Remedy

Having found that Respondent ILA and Respondent NYSA have engaged in unfair practices in violation of Section 8(e), and that Respondent ILA has engaged in unfair labor practices in violation of Section 8(b)(4)(ii)(B) of the Act, we shall order that each Respondent cease and desist from the proscribed conduct and take certain affirmative action which we find necessary to remedy and remove the effects of the unfair labor practices and to effectuate the policies of the Act.

Conclusions of Law

1. New York Shipping Associations, Inc., Dolphin Forwarding, Inc., and San Juan Freight Forwarders, Inc., are employers engaged in commerce within the meaning of Section 2(2) and (6) of the Act.

2. International Longshoremen's Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining, giving effect to, and enforcing the contracts and agreements known as the Rules on Containers between ILA and NYSA to the extent and

in the manner said contracts and agreements have been found to be unlawful herein, Respondents ILA and NYSA have engaged in unfair labor practices within the meaning of Section 8(e) of the Act.

4. By threatening to assess and by assessing liquidated damages as provided in the above-described agreements, thereby threatening, restraining, and coercing Respondent NYSA, or any of its employer-members, with an object being to force those persons engaged in commerce to cease doing business with Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc., Respondent ILA has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Union, International Longshoremen's Association, AFL-CIO, New York, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Maintaining, giving effect to, and enforcing the contracts and agreements known as the Rules on Containers between ILA and NYSA to the extent and

in the manner said contracts and agreements have been found to be unlawful herein, or any other contract or agreement, express or implied, whereby NYSA, on behalf of its employer-members, agrees to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

(b) Threatening, coercing, or restraining NYSA, or any of its employer-members, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require such persons to cease doing business with Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc.

2. Take the following affirmative action which is found necessary to effectuate the policies of the Act:

(a) Notify its members who are employed by employer-members of NYSA that Respondent Union has no objections to loading or unloading containers that have been stuffed or are to be unstuffed by employees or agents of Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc.

(b) Notify all its members who are employed by employer-members of NYSA that any previous instructions, requests, or appeals made by Respondent Union to strip and restuff containers stuffed or to be unstuffed by Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc., have been withdrawn and are to have no force or effect.

(c) Notify all its members that any and all of the paragraphs contained in the contracts and agreements known as the Rules on Containers negotiated by and between ILA and the Council of North American Shipping Associations on behalf of NYSA which limit, restrain, restrict, tax, or prohibit handling, in the customary manner, containers that have been stuffed or are to be unstuffed by Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc., have been found to be void and unenforceable with respect to Dolphin Forwarding, Inc., and San Juan Freight Forwarders, Inc.

(d) Post at its business offices, meeting halls, and all dispatch halls copies of the attached notice marked "Appendix A."[6] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by a representative of Respondent Union, shall be posted by Respondent Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including the dispatch halls and all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Or-

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[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

der, that steps Respondent Union has taken to comply herewith.

B. Respondent New York Shipping Association, Inc., New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from maintaining, giving effect to, and enforcing the contracts and agreements known as the Rules on Containers between ILA and NYSA to the extent and in the manner said contracts and agreements have been found to be unlawful herein, or any other contract or agreement, express or implied, whereby NYSA, on behalf of its employer-members, agrees to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

2. Take the following affirmative action which is found necessary to effectuate the policies of the Act:

(a) Notify all its employer-members that any previous instructions, requests, or appeals which Respondent NYSA may have made against loading containers that have been stuffed or are to be unstuffed by Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc., are to be withdrawn and to have no force or effect.

(b) Notify all its employees and employer-members that it has no objection to their loading, unloading, or otherwise handling containers that have been stuffed or are to be unstuffed by Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc.

(c) Notify all its employer-members that any and all provisions of the contracts and agreements known

as the Rules on Containers which have been negotiated between ILA and the Council of North American Shipping Associations on behalf of NYSA which restrain, restrict, limit, tax, or prohibit handling, in the customary manner, containers that have been stuffed, or are to be unstuffed, by Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc., have been found to be void and unenforceable with respect to Dolphin Forwarding, Inc., and San Juan Freight Forwarders, Inc.

(d) Mail to each of its employer-members and post at its main office in New York, New York, and at each area office copies of the attached notice marked "Appendix B."[7] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent NYSA's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employer-members are customarily posted. Reasonable steps shall be taken by Respondent NYSA to insure that said no-notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent NYSA has taken to comply herewith.

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[7] See fn. 6, *supra*.

Dated, Washington, D.C. May 30, 1978.

John H. Fanning, Chairman

Howard Jenkins, Jr., Member

Betty Southard Murphy, Member

NATIONAL LABOR RELATIONS BOARD

[SEAL]

D—3690

APPENDIX A

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the law by committing unfair labor practices. Accordingly, we will post this notice and keep the promises made herein.

WE WILL NOT enter into, maintain in effect, give effect, to invoke, or in any manner or by any means enforce the contracts and agreements known as the Rules on Containers, rules 1, 2, 8, 9, 10, and 11 as set forth in the memorandum of understanding executed on or about June 21, 1974, or any other contract or agreement, express or implied, whereby New York Shipping Association, Inc., on behalf of its employer-members, or the Council of North America Shipping Associations, on behalf of the New York Shipping Association, Inc., agrees to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

WE WILL NOT threaten, coerce, or restrain New York Shipping Association, Inc., or its employer-members, or any other person engaged in commerce or in an industry affecting commerce, by threatening or refusing to handle or by taxing or requiring the payment of money,

or by any other means, where an object thereof is to force or require any of the member companies of the New York Shipping Association, Inc., or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the product of any producer, processor, or manufacturer, or to cease doing business with Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc.

WE WILL and do hereby notify our members, and other individuals employed by the New York Shipping Association, Inc., or any of its employer-members, that we have no objection to their loading, unloading, or otherwise handling containers received from, or to be forwarded to, Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc.

WE WILL and do hereby cancel and withdraw any orders and instructions given to our members and any other individuals to strip and restuff containers stuffed or to be unstuffed by the employees of Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc.

WE WILL and do hereby notify all our members that any and all of the paragraphs contained in the contracts and agreements known as the Rules on Containers negotiated by and between ILA and the Council of North American Shipping Associations on behalf of NYSA which limit, restrain, restrict, tax, or prohibit handling, in the customary manner, containers that have been stuffed or are to be unstuffed by Dolphin

Forwarding, Inc., or San Juan Freight Forwarders, Inc., are void and unforceable.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, 26 Federal Plaza, Room 3614, New York, New York 10007, Telephone 212—264-0360.

D—3690

APPENDIX B

NOTICE

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

To Employees and all employer-members of the New York Shipping Association, Inc.:

The National Labor Relations Board has found that we violated the law by committing unfair labor practices. Accordingly, we will post this notice and keep the promises made herein.

WE WILL NOT enter into, maintain in effect, give effect to, invoke, or in any manner or by any means enforce the contracts and agreements, known as the Rules on Containers, rules 1, 2, 7, 8, 9, 10, and 11 as set forth in the memorandum of understanding executed on or about June 21, 1974, or any other contract or agreement, express or implied, whereby New York Shipping Association, Inc., on behalf of employer-members of the Council of North America Shipping Associations, on behalf of New York Shipping Association, Inc., agrees to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

WE WILL and do hereby cancel and withdraw any orders and instructions given to our employer-members, employees, or any other individual to strip and restuff containers, stuffed or to be unstuffed by the employees of Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc.

WE WILL and do hereby notify all our employees and employer-members that we have no objection to their loading, unloading, or otherwise handling containers that have been stuffed or are to be unstuffed by Dolphin Forwarding, Inc., or San Juan Freight Forwarders, Inc.

WE WILL and hereby do notify all our employer-members that any and all provisions of the contracts and agreements known as the Rules on Containers which have been negotiated between ILA and the Council of North America Shipping Associations on our behalf which restrain, restrict, limit, tax, or prohibit handling, in the customary manner, containers that have been stuffed, or are to be unstuffed, by Dolphin Forwarding, Inc., and San Juan Freight Forwarders, Inc., are void and unenforceable.

NEW YORK SHIPPING
ASSOCIATION, INC.
(Employer)

Dated ..... By .....
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, 26 Federal Plaza, Room 3644, New York, New York 10007, Telephone 212—264-0360.

APPENDIX E

International Longshoremen's Association, AFL-CIO; Hampton Roads District Council International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 1970, AFL-CIO; International Longshoremen's Association, Local 862, AFL-CIO; International Longshoremen's Association, Local 1248, AFL-CIO; International Longshoremen's Association Local 846, AFL-CIO; International Longshoremen's Association, Local 970, AFL-CIO; International Longshoremen's Association, Local 1458, AFL-CIO; International Longshoremen's Association, Local 1624, AFL-CIO; International Longshoremen's Association, Local 1784, AFL-CIO; International Longshoremen's Association, Local 1819, AFL-CIO; International Longshoremen's Association, Local 1840, AFL-CIO *and* Associated Transport, Inc.

International Longshoremen's Association, AFL-CIO; Hampton Roads District Council International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 1970, AFL-CIO; International Longshoremen's Association, Local 862, AFL-CIO; International Longshoremen's Association, Local 1248, AFL-CIO; International Longshoremen's Association, Local 846, AFL-CIO; International Longshoremen's Association, Local 970, AFL-CIO; International Longshoremen's Association, Local 1458, AFL-CIO; International Longshoremen's Association, Local 1624, AFL-CIO; International Longshoremen's Association, Local 1784, AFL-CIO; International Longshoremen's Association, Local 1819, AFL-CIO; International Longshoremen's Association, Local 1840,

AFL-CIO; and Hampton Roads Shipping Association *and* Associated Transport, Inc. and Council of North Atlantic Shipping Associations, Party to the Contract

International Longshoremen's Association, AFL-CIO; Atlantic Coast District Council International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 333, AFL-CIO; International Longshoremen's Association, Local 921, AFL-CIO; International Longshoremen's Association, Local 953, AFL-CIO; International Longshoremen's Association, Local 1355, AFL-CIO; International Longshoremen's Association, Local 1429, AFL-CIO; *and* Houff Transfer, Inc.

International Longshoremen's Association, AFL-CIO; Atlantic Coast District Council International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 333, AFL-CIO; International Longshoremen's Association, Local 921, AFL-CIO; International Longshoremen's Association, Local 953, AFL-CIO; International Longshoremen's Association, Local 1355, AFL-CIO; International Longshoremen's Association, Local 1429, AFL-CIO *and* Houff Transfer, Inc. and Council of North Atlantic Shipping Associations, Party to the Contract

International Longshoremen's Association, AFL-CIO; Hampton Roads District Council International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 1970, AFL-CIO; International Longshoremen's Association, Local 862, AFL-CIO; International Longshoremen's Association, Local 1248, AFL-CIO; International Longshoremen's Association, Local 846, AFL-CIO;

International Longshoremen's Association, Local 970, AFL-CIO; International Longshoremen's Association, Local 1458, AFL-CIO; International Longshoremen's Association, Local 1624, AFL-CIO; International Longshoremen's Association, Local 1784, AFL-CIO; International Longshoremen's Association, Local 1819, AFL-CIO; International Longshoremen's Association, Local 1840, AFL-CIO; International Longshoremen's Association, Local 1736, AFL-CIO *and* Houff Transfer, Inc.

International Longshoremen's Association, AFL-CIO; Hampton Roads District Council International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 1970, AFL-CIO; International Longshoremen's Association, Local 862, AFL-CIO; International Longshoremen's Association, Local 1248, AFL-CIO; International Longshoremen's Association, Local 846, AFL-CIO; International Longshoremen's Association, Local 970, AFL-CIO; International Longshoremen's Association, Local 1458, AFL-CIO; International Longshoremen's Association, Local 1624, AFL-CIO; International Longshoremen's Association, Local 1784, AFL-CIO; International Longshoremen's Association, Local 1819, AFL-CIO; International Longshoremen's Association, Local 1840, AFL-CIO; International Longshoremen's Association, Local 1736, AFL-CIO *and* Houff Transfer, Inc. and Council of North Atlantic Shipping Associations, Party to the Contract

International Longshoremen's Association, AFL-CIO; Hampton Roads District Council International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 1970,

AFL-CIO; International Longshoremen's Association, Local 862, AFL-CIO; International Longshoremen's Association, Local 1248, AFL-CIO; International Longshoremen's Association, Local 846, AFL-CIO; International Longshoremen's Association, Local 970, AFL-CIO; International Longshoremen's Association, Local 1458, AFL-CIO; International Longshoremen's Association, Local 1624, AFL-CIO; International Longshoremen's Association, Local 1784, AFL-CIO; International Longshoremen's Association, Local 1819, AFL-CIO; International Longshoremen's Association, Local 1840, AFL-CIO; International Longshoremen's Association, Local 1736, AFL-CIO; International Longshoremen's Association, Local 1783, AFL-CIO *and* Tidewater Motor Truck Association

International Longshoremen's Association, AFL-CIO; Hampton Roads District Council International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, Local 1970, AFL-CIO; International Longshoremen's Association, Local 862, AFL-CIO; International Longshoremen's Association, Local 1248, AFL-CIO; International Longshoremen's Association, Local 846, AFL-CIO; International Longshoremen's Association, Local 970, AFL-CIO; International Longshoremen's Association, Local 1458, AFL-CIO; International Longshoremen's Association, Local 1624, AFL-CIO; International Longshoremen's Association, Local 1784, AFL-CIO; International Longshoremen's Association, Local 1819, AFL-CIO; International Longshoremen's Association, Local 1840, AFL-CIO; International Longshoremen's Association, Local 1736, AFL-CIO; International Long-

shoremen's Association, Local 1783, AFL-CIO; Council of North Atlantic Shipping Associations; and Hampton Roads Shipping Association *and* Tidewater Motor Truck Association. Cases 5-CC-791, 5-CE-48, 5-CC-792, 5-CE-49, 5-CC-793, 5-CE-50, 5-CC-794, and 5-CE-51

August 12, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND WALTHER

On August 19, 1976, Administrative Law Judge Leonard M. Wagman issued the attached Decision in this proceeding. Thereafter, Respondents Council of North Atlantic Shipping Associations, Hampton Roads Shipping Association, and International Longshoremen's Association, AFL-CIO, and its affiliated District Councils and Locals filed exceptions and supporting briefs. The General Counsel filed an answering brief in support of the Administrative Law Judge's Decision. Charging Party Houff Transfer, Inc., filed cross-exceptions and supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in the proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

Upon careful consideration and detailed analysis of the record evidence, the Administrative Law Judge concluded that Respondents violated the Act as alleged. We agree. Notwithstanding our dissenting colleague's incorrect intimation that the Administrative Law Judge decided this case solely on the authority of our decision in *International Longshoremen's Association, AFL-CIO* (*Consolidated Express, Inc.*), 221 NLRB 956 (1975), without giving due consideration to the so-called critical dissimilarities between that earlier case and the instant case, it is clear that the Administrative Law Judge fully developed the facts here to support the violations which he found. Moreover, despite his own lengthy analysis, our dissenting colleague has ultimately failed to overcome the criteria (noted principally at sec. B, par. 6, of the Administrative Law Judge's Decision) that the Administrative Law Judge correctly relied on in finding the violations in this proceeding.

We further disagree with our dissenting colleague's characterization of trucking industry representatives' testimony as "conceding" that they *knew* the work they were performing was in violation of the container rules. These officials testified only that Respondents and certain shipping personnel deemed these actions to be violations, not that they actually were violations, or that the trucking industry acknowledged them to be such.

We also reject our colleague's reliance on the Dublin agreement as support for his conclusion that Respondents' object here was a work-preservation

object. The 1973 Dublin agreement, in relevant part, contained provisions dealing with Respondents' jurisdiction over the unloading of full shippers' loads destined for warehouse storage within 50 miles of port. Respondents' members had been doing that work since 1969, but it is not the work at issue here. Rather, as our dissenting colleague himself notes, "the actions of the [Respondents] and shipping companies which we must adjudge [in this proceeding] involve only shippers' loads destined for a beneficial owner more than 50 miles from port, but which were picked up by motor transport carriers and stripped at trucking stations within 50 miles of port." To that end, the Dublin agreement does not aid our colleague's position in any way.

Our dissenting colleague also finds some significance in the fact that in the *Consolidated Express* case, noted above, the charging parties were companies historically engaged in the primary function of loading and unloading, whereas the Charging Parties here are primarily engaged in the transportation of cargo and not its loading or unloading. We view this fact as a distinction without a difference because it is not important what type of enterprise was doing the work; rather, what is important is that Respondents' members here, as in *Consolidated Express*, had *not* historically done the work.

Finally, our colleague makes passing reference to the Supreme Court's recent decision in *Northeast Marine Terminal Company, Inc.* v. *Caputo*, Docket 76-444 (June 17, 1977). We agree with his statement that the context of that case is "concededly different" from that present here. And to the extent our colleague extracts certain language from that decision which he indicates supports his position, we note that the Supreme Court there expressly adopted certain language from the Second Circuit's decision in *Consolidated Express*, 537 F.2d 706 (1976). It was also the Second Circuit which enforced our decision in *Consolidated Express* with the words "it is clear that the on-pier stripping and stuffing work performed by longshoremen as an incident of loading and unloading ships does not embrace the work [of stuffing and stripping containers] traditionally performed by Consolidated and Twin at their own off-pier premises." (537 F.2d at 712.) Thus, reference to the *Northeast Marine* case when read in conjunction with the *Consolidated Express* decision proves only one thing, that it is the facts of each case in the area which are paramount.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondents International Longshoremen's Association, AFL-CIO; Hampton Roads District Council International Longshoremen's Association, AFL-CIO; ILA Locals 846, 862, 970, 1248, 1458, 1624, 1736, 1738, 1784, 1819, 1840, and 1970, AFL-CIO; Atlantic Coast District Council International Longshoremen's Association, AFL-CIO; and

ILA Locals 333, 921, 953, 1355, and 1429, AFL-CIO, their respective officers, agents, and representatives, and Respondents Council of North Atlantic Shipping Associations (CONASA), and Hampton Roads Shipping Association (HRSA), their respective officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

CHAIRMAN FANNING, dissenting:

In concluding that Respondents violated Section 8(e) and Section 8(b)(4)(ii)(B) of the Act, the Administrative Law Judge placed considerable reliance on the Board's determination in *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc.)*,[1] involving the knotty problem of some facets of containerization in the New York port area. Here, the problem involves another facet of containerization as it developed some 10 years later in the ports of Baltimore and Hampton Roads. While the Administrative Law Judge cites additional factors which I address below, it is his failure to perceive distinctions between the work practices and bargaining agreements negotiated by the ILA and the shipping companies in New York and those involving the ports of Baltimore and Hampton Roads which results in his erroneous legal conclusion. My colleagues, I fear, by affirming the Administrative Law Judge, fail to heed the Supreme Court's warning that

[1] 221 NLRB 956 (1975), enfd. 537 F.2d 706 (C.A. 2, 1976), cert. denied 97 S.Ct. 740 (1977) (hereinafter *Consolidated Express*).

assessing whether a contractual provision has a valid work-preservation objective "will not always be a simple test to apply." [2] In my view, a more searching inquiry reveals critical dissimilarities between this case and *Consolidated Express*.

At issue here is the limited question of whether rules 1(a)(3) and 2B(2) of the 1974-77 Rules on Containers (hereinafter 1974 Rules),[3] which entitle International Longshoremen's Association (ILA) la-

[2] *National Woodwork Manufacturers Association* v. *N.L.R.B.*, 386 U.S. 612, 645 (1967).

[3] The rules' pertinent provisions are as follows:

Rule 1—*Containers to be Loaded or Discharged by Deepsea ILA Labor.*

(a) Cargo in containers referred to below shall be loaded into or discharged out of containers only at a waterfront facility by deepsea ILA labor.

(1) Containers owned, leased or used by carriers . . . which contain consolidated container loads, which come from or go to any point within a geographic area of any CONASA port described by a 50-mile circle with its radius extending out from the center of each port, (hereinafter geographic area) or

* * * * *

(3) Containers designated for a single consignee from which the cargo is discharged (deconsolidated) by other than its own employee within the "geographic area" and which is not warehoused in accordance with Rule 2(B).

Rule 2—*Containers Not to be Loaded or Discharged by I.L.A. Labor.*

B. Import Cargo:

* * * * *

(2) Containers discharged at a qualified consignee's facility by its own employees.

bor to strip and stuff shippers' loads [4] whenever the work is to be done within 50 miles of port by other than the consignee's employees, are valid work-preservation provisions. In making this determination, careful scrutiny must be given to that history of containerization which is unique to the ports of Baltimore, Maryland, and Hampton Roads, Virginia.

The record discloses that container traffic first appeared in Baltimore harbor and in the Hampton Roads port area in 1965. For decades prior to this time, ILA employees unloaded bulk cargo from steamships on a piece-by-piece basis, sorted it out, and transported the cargo to the end of the pier for loading by them onto the back of a truck. Their work therefore covered all movement of ocean cargo from a delivery truck's tailgate to the ship's hold for export cargo, and the converse for import cargo. Between 1965 and 1968, ILA's collective-bargaining agreements covering longshoremen in the ports of Baltimore and Hampton Roads did not contain any rules regarding the extent to which longshoremen were to be used in the handling of containers or their contents. It appears that, during this period, ILA-represented employees stripped (unloaded) import containers which held less-than-trailer-load cargo (LTL) and also consolidated full container loads.[5]

[4] The term "shipper's load" refers to a full container of goods from one shipper to a single beneficial owner-consignee.

[5] An LTL load refers to a container which is not full and which contains the cargo of two or more shippers. Consolidated loads contain the goods of two or more shippers and are usually destined for more than one consignee or beneficial owner.

Full shippers' loads, however, were placed by ILA labor on the pier, unless unloading was requested by the consignee's agent or the stevedore. A motor transport carrier generally would then drive to the pier and pick up the shipper's load container intact.

With the advent of containerization, the work opportunities associated with bulk cargo on the piers diminished substantially.[6] The adaptation to burgeoning containerization led to a 56-day strike by the ILA in 1963. Following the strike settlement, the ILA entered into a 1968-71 collective-bargaining agreement with Hampton Roads Maritime Association [7] and Steamship Trade Association of Baltimore (STA), setting forth "Rules and Conditions Covering Handling of Containers." It is apparent therefore that these initial rules on containers were adopted in Baltimore and Hampton Roads when containerization in those ports was still in its infancy.[8]

Since the introduction of container traffic to the ports of Baltimore and Hampton Roads, the shipping

[6] An ILA official testified that, before containerization, 5 gangs of 22 men loaded or unloaded an average of 30 tons per hour. With the new method of loading and unloading ships, a 20-man gang and 1 crane could load 600 tons per hour.

[7] The Hampton Roads Maritime Association was the predecessor to the Hampton Roads Shipping Association (HRSA), a Respondent in this case.

[8] From its inception in 1965, the amount of container traffic increased every year. Although only numbering a handful in 1965, by 1969 1 shipping company was handling 4,000 containers per year in Baltimore and by 1973 the number had grown to 25,000.

companies and ILA have contractually agreed that ILA-represented employees must load and unload LTL and consolidated full container loads if destined for a point within a 50-mile radius from the center of port. Two subsequent agreements negotiated by the ILA and representatives of the steamship carriers for 1971-74 and 1974-77 have also included provisions authorizing ILA members to perform this work.[9] These contractual provisions and the work practices relative to LTL and consolidated loads, however, are not at issue here.

Our sole concern is with the provisions in the 1974 Rules, which entitle ILA labor to strip shippers' loads whenever such work is to be done less than 50 miles from port. Specifically, the actions of the ILA and shipping companies which we must adjudge involve only shippers' loads destined for a beneficial owner more than 50 miles from port, but which were picked up by motor transport carriers and stripped at trucking stations within 50 miles of port. This practice is referred to as shortstopping.

In support of their contention that stripping of shippers' loads was never work traditionally performed by ILA labor, the General Counsel and the motor carriers maintain that the ILA abandoned any claim it might have had to such work in the 1968 and 1971 rules on containers applicable to the area be-

[9] The 1971 and 1974 contracts were negotiated by the Council of North Atlantic Shipping Associations (CONASA), an association of employer shipping associations, including STA and HRSA, which has been authorized to enter into collective-bargaining agreements on behalf of its members since 1971.

cause they omitted any specific provision regarding the handling of shippers' loads. This assertion that shippers' loads were thereby unrestricted by the ILA is belied by the work history involving shippers' loads going to warehouses after the 1968 contract.

As recognized by the Administrative Law Judge and conceded by the General Counsel, following execution of the 1968 agreement, ILA longshoremen stripped shippers' loads destined for a warehouse for storage within 50 miles of port. Until the January 1973 Dublin agreement[10] in which the ILA recognized an exception for bona fide storage and agreed not to claim the right to handle import cargo to be "warehoused in the normal course of business for at least 30 days," the ILA retained jurisdiction to unload shippers' loads destined for warehouses.[11]

[10] The Dublin agreement was not unique to Baltimore and Hampton Roads but applied also to New York.

[11] The Dublin agreement therefore took effect during the 1971 contract and thus prior to the 1974 Rules which made the first explicit reference to shippers' loads. If there was no consensus entitling ILA labor to strip shippers' loads destined for warehouses prior to 1974, then the Dublin agreement would have been a superfluous exemption under the 1971 Rules. My colleagues, while not disputing this, do overlook its significance. Though not encompassing the precise work at issue, the Dublin agreement demonstrates that, notwithstanding the absence of specific contractual provisions regarding the handling of shippers' loads prior to 1974, it was understood that not all shippers' loads could pass through port unrestricted by ILA labor. This evidence strengthens the ILA's claims concerning shippers' loads and undermines the Administrative Law Judge's reliance on the plain language of the 1968 and 1971 Rules in casing doubt on respondents' claim that the shortstopping of shippers' loads violated the —— and 1971 Rules.

Since the inception of containerization in both Hampton Roads and Baltimore, the ILA has insisted, with the acquiescence of the shipping companies, that shippers' loads go directly to their destination intact. The only exemption from this practice was that a shipper, manufacturer, or consignee could choose to strip or stuff shippers' loads or manufacturers' loads using their own employees.[12] This agreement to allow shippers' loads to pass through port unrestricted by ILA labor, however, was never intended or interpreted to allow motor carriers or warehousemen to load or unload shippers' loads at their off-pier facilities. The traditional exemption for shippers' loads was premised on the understanding that such loads are "through" containers, much larger in size but properly analogous to a single item of bulk cargo. When taken to a trucker's warehouse to be stripped and repacked, they lose that identity. The overwhelming testimony indicates that this *shortstopping* of shippers' loads was never approved by the ILA or the shipping companies as a permissible encroachment upon the ILA's traditional work jurisdiction.[13]

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[12] The term "manufacturer's load" is essentially synonymous with that of shipper's load. A "manufacturer's label" is a single shipment transported directly, without stopping en route, from one consignee or manufacturer to another.

[13] For example, George Maier, port manager for U.S. Lines in Baltimore and president of STA, testified that it "had always been a rule that prevailed in Baltimore" that truckers were not to strip any container that was a full shipper's load going to a single consignee. Maier further explained: "In cases where it came to our attention, prior to the delivery of such a shipment to a truckman and it came to our knowledge that the intent of the truckman was to deconsolidate this container and restuff it into his own equipment at his platform, we refused delivery of that cargo to the truckman."

The situation was similar in Hampton Roads. Jack Mace, executive secretary of HRSA, testified that, if a member of HRSA was informed that the pier by a motor carrier that it was going to strip a shipper's load at a trucking station, the shipping company would instruct the ILA to perform the work. Mace also testified that motor carriers in his area were aware of the enforcement of the practice relative to shippers' loads "certainly as far back as 1969."

This situation with respect to the handling of shippers' loads in the ports of Baltimore and Hampton Roads is in marked contrast to the agreements and practices relative to LTL and consolidated container loads in the port of New York, which were at issue in *Consolidated Express*. Containerization first appeared in New York in the late 1950's, much earlier than its advent in Baltimore and Hampton Roads. In 1959, the ILA and the New York Shipping Association (NYSA) reached an agreement in which the ILA agreed that "any employer shall have the right to use any and all type containers without restriction or stripping by the Union." [14] For years thereafter, work on any type container was done by other than ILA labor in accordance with the contractual agreement.[15] The Board concluded therefore that the ILA

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[14] This provisions was contained in sec. 8(a) of the 1959 memorandum of settlement entitled "Containers—Dravo Size or Larger."

[15] The Board indicated that, "with few exceptions," the ILA allowed all containers to cross the New York docks without rehandling.

had bargained away its claim to the stuffing and stripping of LCL and LTL loads in question here.

There is no such restrictive contract clause in the bargaining history of the instant case.[16] Rather, as already indicated, the shipping companies have implicitly agreed with the ILA's demand, since the inception of containerization in Baltimore and Hampton Roads, that shippers' loads go directly to their destination intact. And, from execution of the 1968 Rules until the Dublin agreement of 1973, ILA labor, in fact, stripped shippers' loads that were instead warehoused for storage within 50 miles of port. Thus, unlike *Consolidated Express*, where the union sought to extend its jurisdiction to cover work it had bargained away, here the specificity of the 1974 Rules merely codified what had been the practice and agreement of the ILA and the shipping companies relative to shippers' loads.

In *Consolidated Express*, moreover, maritime cargo in New York was sorted and consolidated for many years by companies whose primary function was consolidation; that is, the loading and unloading of LCL and LTL loads. The Board there recognized that these consolidators "generate such work themselves, performing it not on behalf of the employer-members of NYSA but for their own customers who

[16] The court of appeals did not agree with the Board's abandonment theory in *Consolidated*. Nevertheless, the absence of a similar clause in the instant matter, considering the experience gained by the ILA as a result of a decade of bargaining on this issue relative to New York, acquires particular significance in my view.

have goods to ship." It was further determined by the Board that the consolidator-charging parties in that case were traditionally engaged in the work of stuffing and stripping containers. In context, the ILA's claim "to strip and stuff cargo merely because that cargo was originally containerized by nonunit personnel" was construed as a claim "to engage in make-work measures."

That situation is not present here. The Charging Parties are primarily engaged in the transportation of cargo and not its loading and unloading.[17] Contrary to my colleagues' superficial assessment, this is hardly a distinction without a difference. In *Consolidated Express*, the Board stressed the record's clarity that the charging parties had "engaged in the work of stuffing and stripping containers" for many years. Especially when viewed in the context that the ILA had contractually bargained away its claim to the stuffing and stripping of the container in question there, the persuasiveness of the ILA's claim to a lawful work-preservation objective was considerably diminished. Here, however, the ILA has never relinquished its claim to stuff and strip shippers' loads

[17] For example, Houff Transfer, Inc., first handled the containers of U.S. Lines in March 1970. In the course of its business, Houff moves a few hundred containers per year. Its president, Cletus Houff, testified, however, that Houff has more domestic business (other than container business) than steamship company container business. With respect to the operations of Associated Transport, Inc., the record discloses that approximately 10 percent of its business is in the drayage of containers in foreign commerce.

which do not go to their destination intact. Nor does the record support the conclusion that the motor carriers have "traditionally" been engaged in the stuffing and stripping of such containers. With respect to the record evidence that motor carriers have shortstopped some shippers' loads at their off-pier facilities and used their own employees to strip the loads from the containers and stuff them into the motor carriers' containers for transportation to the consignee, it appears that the work was done without the knowledge of either the ILA or the shipping companies.[18] Whether predicated upon considerations of safety, state highway or bridge regulations, or economy,[19] it is apparent that the work involved could just as satisfactorily have been done at the piers by ILA labor.[20] Viewed in this context, the Administrative

[18] Unlike *Consolidated Express*, in which the shipping documents involved showed when the LTL or LCL containers originated from or were destined to a consolidator, here, when a container is released to a motor carrier, the delivery order specifies that the cargo is to be transported to the consignee. Intent to shortstop is thereby difficult to ascertain, though the early return of the shipping company's container may demonstrate that shortstopping has, in fact, occurred. Effective enforcement of the rules is thus difficult.

[19] Inasmuch as the trucking companies pay a per diem for each day they have a shipper's container, by immediately opening the containers and reloading them in motor transport equipment, the trucking companies can save money.

[20] ILA President Thomas Gleason explained the ILA's position as follows:

> We are not telling Associated, or Pilot, or U.S. Lines not to do business with each other. All we are saying to them is, "look we have a contract which spells out what the rules are." U.S. Lines has no right to make an agreement to bypass our contract. If Associated wants to handle these containers and they want to take it and deliver it in their truck, then come down to the pier with your truck, let the longshoremen, as they have done it for 50 or 75 years, take that cargo and put it on the truck and take it wherever you want. We have no objection to that. Otherwise, take the container and bring it to the man's place of business.

Law Judge's conclusion that the ILA did not have a lawful work preservation objective incorrectly focuses on motor carrier work "traditions."

The incidents alleged here as unlawful secondary activity all involve shippers' loads destined for a beneficial owner more than 50 miles from port, but shortstopped by a motor carrier and stripped within 50 miles of port. Upon learning of these actions, the ILA complained to the appropriate joint ILA-Shipping Company Container Committee [21] that the motor carriers had violated the 1974 container rules. In every case, fines were exacted against the shipping companies which had released the containers to the motor carriers. The shipping companies, in turn, requested indemnification from the trucking companies.[22] When the motor carriers refused, the shipping

[21] Pursuant to the ILA's 1968 contract, joint container committees, representative equally of the ILA and the respective shipping associations in the ports of Baltimore and Hampton Roads, were established to resolve ILA complaints alleging violations of the container rules.

[22] The record demonstrates that, for several years prior to adoption of the 1974 contract, the trucking industry was aware that shortstopping was a violation of the container rules. Allie McNeil, vice president of D. D. Jones Transfer

companies canceled their respective equipment interchange agreements, thereby precluding the affected motor carriers from handling future container cargo.[23]

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and Warehouse Company, Inc., a member of the Tidewater Motor Truck Association, admitted that, since 1969, he knew of the rules and of their application to containers destined for discharge within the 50-mile radius of port. Robert McGleskey, district manager of Carolina Freight Carriers Corp., testified that, shortly after he began operations in Norfolk, Virginia, in 1970, he became aware that it was a violation of the rules for a trucker to strip a shipper's load at its facility. McGleskey further admitted his awareness that the steamship carrier would be assessed damages for this violation. L. Chadwick, assistant manager of Hennis Freight, a member of the Tidewater Motor Truck Association, and a former employee of Associated Transport, admitted similar knowledge since 1971.

[23] A shipping company will not turn over its container to a motor carrier unless there is an equipment interchange agreement between the two carriers. In effect, this agreement is a case which delineates the rights and obligations of the lessee-motor carrier while it has custody of the lessor-shipping company's containers.

The equipment interchange agreement used by the shipper U.S. Lines contains language giving the motor carriers "complete control" of the cargo once they transport it from the pier. This "complete control" language is one basis on which the Administrative Law Judge refutes the testimony of Respondents' witnesses that all parties understood that short-stopping of shippers' loads violated the container rules since the 1968 contract. I find the Administrative Law Judge's reasoning unpersuasive.

The interchange agreement has nothing to do with the handling of cargo but is primarily concerned with user responsibility and per diem charges. There is no language in

If work preservation is actually the objective of the 1974 container rules relative to shippers' loads, the economic impact on the neutral motor carriers does not thereby transform the rules and their enforcement into activity with a secondary objective.[24] Whether rules 1(a)(3) and 2B(2) have an improper "cease doing business' objective, as found by the Administrative Law Judge, is a question of fact which must be resolved here on the basis of the work history regarding shippers' loads in the ports of Baltimore and Hampton Roads. In this vein, the critical determinant is the record's disclosure that, beginning in 1968, ILA labor stripped shippers' loads destined for a warehouse within 50 miles of port.

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the agreement relative to the right of the trucker to take cargo out of the container after its transfer from the shipper.

Perhaps a more significant provision in the interchange agreement is that which obligates the lessee-motor carrier to "comply with any and all appropriate formalities and requirements regarding the use, operation or transportation of the containers or chassis." This arguably binds the trucker to adhere to the shipper's obligation to the ILA as set forth in the container rules.

[24] See, e.g., *Local 742, United Brotherhood of Carpenters and Joiners of America* [*J. L. Simmons Company, Inc.*] v. *N.L.R.B.*, 444 F.2d 895, 901 (C.A.D.C., 1971), cert. denied 404 U.S. 986 (1971); *American Boiler Manufacturers Association* v. *N.L.R.B.*, 404 F.2d 547, 552 (C.A. 8, 1968), cert. denied. 398 U.S. 960 (1970), affg. 167 NLRB 602 (1967); *N.L.R.B.* v. *Local Union No. 23 of Sheet Metal Workers International Association of Greater New York* [*Johnson Service Company*], 380 F.2d 827, 830 (C.A. 2, 1967). See also the Supreme Court's discussion of its interpretation of the historical counterpart to Sec. 8(b)(4)(ii)(B), in *National Woodwork Manufacturers Association* v. *N.L.R.B.*, 386 U.S. 612, 627 (1967).

This practice continued until the Dublin agreement of January 1973 which exempted any cargo warehoused "in the normal course of the business of the beneficial owner" for at least 30 days. The incidents of shortstopping of shippers' loads by the motor carriers for which the ILA here exacted fines, however, do not constitute permissible warehousing as defined in the Dublin agreement. These incidents therefore violated rules 1(a)(3) and 2B(2) of the 1974 container rules. In my view, these rules reflect the work practices and agreements between the ILA and the shipping companies relative to the handling of shippers' loads almost since the inception of containerization in the ports of Baltimore and Hampton Roads. Until the Dublin agreement, the ILA and shipping companies agreed that, if shippers' loads did not go to their destination intact to be stripped and stuffed by the employees of the shipper, manufacturer, or consignee, then the unloading and reloading of such containerized loads should be done on the pier by ILA longshoremen just as they had handled break bulk cargo for decades.[25] The intervening contracts

[25] In *Northeast Marine Terminal Company, Inc.* v. *Caputo*, Docket 76-444 (June 17, 1977), the Supreme Court decided that an individual stripping a container is engaged in a "longshoring operation" within the meaning of the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act (Act). Although the context is concededly different from that here, the Supreme Court's discussion of containerization, in terms of moving longshoremen's work shoreward, is instructive. The Court stated:

> In effect, the operation of loading and unloading has been moved shoreward, the container is a modern substitute

specifically confirm this. The ILA never bargained away its claim to the work in dispute. Nor in enforcing it does it seek either to expand the longshore bargaining unit by the involuntary addition of other employees or to achieve any labor relations objective outside of this unit. Against this background, I view rules 1(a)(3) and 2B(2) of the 1974 container rules as valid work-preservation provisions, the maintenance and enforcement of which violate neither Section 8(e) nor Section 8(b)(4)(ii)(B) of the Act. To conclude otherwise would be to restructure the work practices and agreements which the ILA and the shippers have negotiated in response to the momentous impact which containerization brought to the ports of Baltimore and Hampton Roads. This we do not have authority to do.

I would further find, contrary to the Administrative Law Judge, that the ILA's 30-day suspension of the 1974 Rules on April 28, 1975, did not have an objective proscribed by Section 8(b)(4)(ii)(B). In compliance with the rules' "30 days written notice" provisions, ILA notified CONASA, in late March 1975, of its intent to suspend the rules because of phony warehouse practices. It had come to the ILA's attention that truckers were attempting to circumvent the "permissible warehousing" provisions of the

> for the hold of the vessel. As Judge Friendly observed below, "stripping a container . . . is the functional equivalent of sorting cargo discharged from a ship; stuffing a container is part of the loading of the ship even though it is performed on the shore and not in the ship's cargo holds."

Dublin agreement by simply using their warehouses as deconsolidation stations. As ILA President Thomas Gleason explained, motor carriers were bringing the cargo "in the front door and out the back" and construing this as justifiable warehousing. After negotiations, the ILA and CONASA executed a supplemental agreement which "clarified and reinstated" the 1974 container rules.[26] Based on my views as expressed above, I would similarly find that the negotiations concerning the 30-day suspension of the rules had a valid work-preservation objective.

Accordingly, I would dismiss the complaint in its entirety.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge:

These consolidated cases were heard before me in accordance with Section 10(b) of the National Labor Relations Act, as amended (29 U.S.C. § 158, *et seq.*), referred to herein as the Act, on October 15, 16, 17, 22, 23, and 24, 1975. The Respondents participated in the hearing pursuant to due notice and two consolidated complaints issued respectively by the Regional Director for Region 5 on September 25 and October 1, 1975, which were in turn consolidated by order of the Acting Regional Director on October 10,

[26] The clarification explained that trucking stations where containers are unloaded within 50 miles of port do not constitute bona fide public warehouses within the meaning of the Dublin 30-day warehouse exception.

1975. The consolidated complaint of October 10, 1975, alleged that all the Respondents had violated Section 8(e) of the Act and that Respondents International Longshoremen's Association and its Hampton Roads and Atlantic Coast District Councils, and ILA locals (referred to herein collectively as ILA), named in the above caption had violated Section 8(b)(4)(ii)(B) of the Act.

In summary, Cases 5-CE-48, 5-CE-50, and 5-CE-51,[1] allege that Respondents ILA, Hampton Roads District Council and their affiliated locals in the Hampton Roads Shipping Association (referred to herein as HRSA) and CONASA violated Section 8(e) of the Act by entering into, maintaining, and giving effect to provisions of their current collective-bargaining agreement whereby employer-members of HRSA have agreed to cease doing business with Associated Transport, Inc. (referred to herein as Associated), Houff Transfer, Inc. (referred to herein as Houff), and other employer-members of Tidewater Motor Truck Association (referred to herein as TMTA). Cases 5-CC-791, 5-CC-793, and 5-CC-794 alleged that ILA, its Hampton Roads District Coun-

[1] At the hearing, I granted the motion of the Council of North America Shipping Associations (referred to herein as CONASA), one of the Respondents named in Case 5-CE-51, to intervene as a party to the contract in Cases 5-CE-48, 5-CE-49, 5-CE-50, and 5-CE-51. However, in making that ruling, I overlooked CONASA's status as a named Respondent in Case 5-CE-51. Accordingly, I now amend my ruling to correct that inadvertence. The captions of Cases 5-CE-48, 5-CE-49, and 5-CE-50 appear as amended at the hearing. I have restored the caption in Case 5-CE-51 to its correct form.

cil and their affiliated locals in the Hampton Roads, Virginia, port area violated Section 8(b)(4)(ii)(B) of the Act by imposing fines upon employer-members of HRSA, including United States Lines, Inc. (referred to herein as U.S. Lines), by suspending a portion of the 1974-77 collective-bargaining agreement with HRSA, and by entering into, maintaining, and seeking to enforce portions of the same agreement regarding cargo containers, all with an object of compelling such employer-members of HRSA to cease doing business with Associated, Houff, and other members of TMTA.

In Case 5-CE-49, the complaint alleges that Respondents ILA, its Atlantic Coast District Council, and their affiliated locals in the Baltimore, Maryland, port areas violated Section 8(e) of the Act by entering into, maintaining, and giving effect to provisions of their 1974-77 collective-bargaining agreement with Steamship Trade Association of Baltimore, Inc. (referred to herein as STA), including U.S. Lines and Lavino Shipping Company (referred to herein as Lavino), whereby STA and its employer-members have agreed to cease doing business with Houff. Finally, Case 5-CC-792 alleges that Respondents ILA, its Atlantic Coast District Council and their affiliated locals in the Baltimore port area violated Section 8(b)(4)(ii)(B) of the Act by engaging in conduct similar to that alleged in Cases 5-CC-791, 5-CC-793, and 5-CC-794 for the purposes of compelling U.S. Lines and Lavino to cease doing business with Houff.

Upon the entire record in this case, including the

transcript of the hearing before me, the transcript of testimony in a proceeding ancillary to the instant case, i.e., *William C. Humphrey, etc.* v. *International Longshoremen's Association, AFL-CIO, et al. and Hampton Roads Shipping Association*, Civil Action 75-441-N in the U.S. District Court for the Eastern District of Virginia, Norfolk Division, a proceeding in which the Regional Director of Region 5 sought an injunction under Section 10(l) of the Act,[2] and the parties' briefs, as corrected and supplemented, I make the following:

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATIONS INVOLVED

Houff, a Virginia corporation, operates freight terminals at Baltimore, Maryland, and Norfolk, Virginia. Associated, a New York corporation, operates a freight terminal at Virginia Beach, Virginia. Both Houff and Associated are engaged in the interstate transportation of freight by motor truck under licenses issued by the Interstate Commerce Commis-

[2] Following the adjournment of the hearing in the instant case on October 24, the parties had opportunity to determine if the hearing should resume for purposes of cross-examination of witnesses who had testified in the injunction proceeding. Thereafter, on December 9, 1975, upon agreement of all parties, I issued an order in which I received the transcript in the injunction proceeding as part of the record herein, marked Jt. Exh. 1, and closed the hearing as of that same date.

sion. During the preceding 12 months, Houff and Associated, respectively, received revenues exceeding $50,000 from their interstate freight operations.

STA is an organization composed of various steamship lines and steamship agencies doing business in the Baltimore, Maryland, port area including U.S. Lines and Lavino. It exists for the purpose, among others, of bargaining collectively on behalf of its employer-members with labor organizations, including ILA, concerning wages, hours, and conditions of employment of the employese of the Associations employer-members. U.S. Lines, a New Jersey corporation, and Lavino, a Pennsylvania corporation, are engaged in the transportation of cargo by oceangoing vessels in interstate and foreign commerce. During the past 12 months, STA's employer-members received in excess of $1 million from the transportation of cargo in interstate and foreign commerce.

CONASA is, and at all times since 1971 has been, an association of employer shipping associations, including STA and HRSA, the members of which are engaged in the business of conducting collective-bargaining negotiations on behalf of their respective employer-members and entering into collective-bargaining agreements covering the employees of their employer-members of HRSA, including U.S. Lines, received in excess of $1 million from the transportation of cargo in interstate and foreign commerce.

TMTA is an employer association composed of 28 employer-members including Associated, which are engaged in interstate transportation and delivery of

general freight and commodities in and around the Hampton Roads, Virginia, area. During the past 12 months, the employer-members of Tidewater received in excess of $50,000 from the interstate transportation and delivery of freight and commodities.

At all times material herein, U.S. Lines, Lavino, Associated, Houff, the employer-members of TMTA, STA, HRSA, and CONASA, are, and each has been, an employer as defined in Section 2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act, respectively.

I further find that ILA, Hampton Roads District Council, Atlantic Coast District Council, and ILA Locals 333, 846, 862, 921, 953, 970, 1248, 1355, 1429, 1458, 1624, 1736, 1783, 1784, 1819, 1840, and 1970 are labor organizations within the meaning of Section 2(5) of the Act.

I conclude and find that it is proper to assert jurisdiction in these proceedings.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. The evolution of the ILA-CONASA Container Rules

Prior to the mid-1960's, when the first containerships appeared in Baltimore harbor and in the Hampton Roads port area, the ILA longshoremen unloaded bulk cargo from steamships, sorted it out on a piece

basis, and transported the cargo to the end of the pier for loading onto the back of a truck. There, I find from the testimony of ILA President Thomas W. Gleason, Sr., that the longshoremen's work ended with respect to import cargo. At that point, in Baltimore and in Hampton Roads, where truck transportation was involved, a freight handler would load the cargo onto the back of a truck sent by the consignee. Although the ILA has represented the freight handlers, I find from Mr. Gleason, Sr.'s, testimony that they were not longshoremen. However, after the mid-1960's with the increasing use of large containers, the work opportunities associated with bulk cargo on the piers diminished.

Notwithstanding this development, ILA's collective-bargaining agreements covering longshoremen in the ports of Baltimore and Hampton Roads for the years prior to 1968 did not contain any rules regarding the extent to which longshoremen were to be utilized in the handling of containers or their contents. During those years, ILA longshoremen stripped (unloaded) import containers which held less-than-trailer-load cargo (LTL).[3] However, they did not strip full shipper's loads (import containers loaded with goods belonging to a single consignee, who was also beneficial owner of the cargo) unless requested to do so by the consignee's agent or the stevedore. Thus, as a rule, ILA labor simply removed the shipper's load container from the ship to the pier, where it was picked up by a motor transport carrier.

[3] LTL cargo refers to individual shipments destined to two or more consignees which have been shipped in a single container.

In their 1968-71 collective-bargaining agreement, ILA and HRSA's precedessor, Hampton Roads Maritime Association, for the first time, dealt with containerization in the bargaining unit. In this context, the provisions pertinent to this case were as follows:

II. RULES ON CONTAINERS

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts at deepsea piers or terminals. To assure compliance with the collective-bargaining provisions the following rules and regulations shall be applied.

A. Definitions and Rule as to Containers Covered.

Stuffing—means the act of placing cargo into a container.
Stripping—means the act of removing cargo from a container.
Loading—means the act of placing containers aboard a vessel.
Discharging—means the act of removing containers from a vessel.
These provisions relate solely to containers meeting each and all of the following criteria:

1. Containers owned or leased by employer-signatory members (including containers on wheels) which contain LTL loads or consolidated full container loads.

2. Such containers which come from or go to any person (including a consolidator who stuffs containers of outbound cargo or a distributor

who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo.

3. Such containers which come from or go to any point within a geographical area of any port in the North Atlantic District described by a 50-mile circle within its radius extending out from the center of each port. It is understood that the center of Hampton Roads will be defined as Middle Ground Light.

B. Rule of Stripping and Stuffing Applied to Such Containers

A container which comes within each and all of the criteria set forth in "A" above shall be stuffed and stripped by ILA longshore labor. Such ILA labor shall be paid and employed at longshore rates under the terms and conditions of the General Cargo Agreement. Such stuffing and stripping shall be performed on a waterfront facility, pier or dock. No contaner of cargo shall be stuffed or stripped by ILA longshore labor more than once. Notwithstanding the above provisions, LTL loads or consolidated container loads of mail, of household goods with no other type of cargo in the container, and of personal effects of military personnel shall be exempt from the rule of stripping and stuffing.

C. Rules on No Avoidance or Evasion

* * * * *

5. Failure to stuff or strip a container as required under these rules will be considered a

violation of the contract betwen the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of "B" shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been stuffed or stripped under the rules then the steamship carrier found guilty of intent to cause improper, fictitious, or incorrect documentation to evade the provisions of "B" above shall pay to the joint Welfare Fund $150.00 per container which should have been stuffed or stripped.

Under the foregoing rules, ILA longshoremen working on the piers were to strip and stuff LTL or consolidate full container loads arriving on piers in containers owned or leased by Hampton Roads Maritime Association members, which were destined for or came from any person, not the beneficial owner of the cargo, and which came from or was destined to any point within a 50-mile radius from the center of the port. The contract also provided that ILA was to receive a royalty for each loaded container which passed over the piers free of stripping or stuffing by "ILA longshore labor."

The 1968-71 ILA-STA collective-bargaining agreement covering the port of Baltimore contained precisely the same container rules as were agreed to at Hampton Roads, except that the liquidated damage provision called for payment of $250 per violation instead of the $150 required under the Hampton Roads contracts.

Since 1970, HRSA and STA have authorized CONANA to bargain collectively with ILA on their behalf regarding container rules. Thus, the container rules for both ports have been uniform in their respective subsequent contracts with ILA.

The ILA's 1971-74 collective-bargaining agreements with HRSA and STA contained the same CONASA-ILA container rules and royalty provision as found in the agreements for 1968-71. As in the 1968-71 contracts, there were no provisions in the 1971-74 contracts regarding the stripping or stuffing of full shippers' loads by ILA longshore labor. On September 11, 12, and 13, 1972, 3 months after the 1971-74 contracts were executed, CONASA and ILA representatives constituting the CONASA-ILA Container Committee met at Miami Beach, Florida, regarding containerization. The committee discussed this same topic from January 25 to 29, 1973, at Dublin, Ireland. The determinations reached at these meetings included the following which was promulgated in the committee's Interpretive Bulletin No. 1:

INTERPRETATION 1.1

Containers Covered

The rules on containers relate solely to containers meeting either of the following criteria:

(a) Containers owned or leased by carriers (inconcluding containers on wheels) which contain LTL loads or consolidated full container loads, which come from or go to any point within a geographical area of any port in

the North Atlantic District described by a 50-mile circle with its radius extending out from the center of each port.

(b) Containers which come from or go to any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not a beneficial owner of the cargo and such containers come from or go to any point within a geographical area of any port in the North Atlantic District described by a 50-mile circle with its radius extending out from the center of each port.

Prior to the 1968 ILA collective-bargaining agreements with HRSA and STA, a warehouse driver as a matter of practice took full shipper's load from a pier, unstripped by ILA longshore labor, and delivered it to a warehouse where warehouse employees would strip the container of its contents and store them. Beginning in 1969, following the execution of the 1968 agreement, ILA longshoremen stripped full shippers' loads which were to be delivered to a warehouse for storage within a 50-mile radius of the center of the port. ILA freight handlers loaded the freight onto trucks for delivery to the warehouse. At Dublin, in January 1973, the CONASA-ILA Container Committe agered to the following modification of their rules:

1. DEFINITIONS

A. Warehousing

A beneficial owner does not violate the Rules on Containers when he warehouses his goods in bona fide public warehouses under the following conditions:

1. The container cargo is warehoused at a bona fide public warehouse;
2. The beneficial owner pays the normal labor charges in and out, and the normal warehouse storage fees for a minimum period of thirty or more days; and
3. The cargo is being warehoused (a) in the normal course of the business of the beneficial owner, (b) title to such goods has not been transferred from the beneficial owner to another, and (c) it is contemplated that such transfer of title will not take place for at least 30 days after the warehousing of the cargo. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1.
4. The beneficial owner furnishes all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2 and 3 have been met.
5. This definition is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a distribution station and treated accordingly.

The ILA-HRSA and ILA-STA contracts, effective October 1, 1974, until September 30, 1977, included the Dublin 30-day warehouse provision as rule 2(B)(4).

These contracts also departed from the 1971-74 contracts with respect to the language of their container rules. The 1974-77 CONASA-ILA rules on containers include the following:

(g) Qualified Consignee—means the purchaser or one who otherwise has a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the import cargo being transported and who is named in the delivery order.

(h) Consolidated Container Load—means a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo.

Rule 1—Containers To Be Loaded or Discharged By Deepsea ILA Labor

(a) Cargo in containers referred to below shall be loaded into or discharged out of containers only at a waterfront facility by ILA deepsea labor:

(1) Containers owned, leased or used by carriers (including containers on wheels and trailers), hereinafter containers, which contain consolidated container loads, which come from or go to any point within a geographic area of any CONASA port described by a 50-mile circle with its radius extending out from the center of each port, (hereinafter "geographical area") or

(2) Containers which come from a single shipper which is not the manufacturer ("manufacturer's label") into which the cargo has been loaded (consolidated) by other than its own employees and such containers come from any point within the "geographic area," or

(3) Containers designated for a single consignee from which the cargo is discharged (deconsolidated) by other than its own employees within the "geographic area" and which is not warehoused in accordance with Rule 2(B).

* * * * *

Rule 2—Containers Not be Loaded or Discharged by ILA Labor

Cargo containers referred to below shall not be loaded or discharged by ILA labor:

A. Export Cargo

* * * * *

B. Import Cargo

* * * * *

(2) Containers discharged at a qualified consignee's facility by its own employees.

Under the 1974-77 container rules, ILA labor is entitled to strip full shippers' loads, whenever such work is to be done within a 50-mile radius of the center of the port by other than the consignee's employees. Under rule 7(c) of the 1974-77 CONASA-ILA contract, the amount of damages for each violation of this rule or the warehouse rule is $1,000.

2. The employment of motor carriers to transport full shipers' loads from piers to consignees

Since the inception of containerization at the port of Baltimore, and in the port area of Hampton Roads, respectively, a motor carrier, typically, has been selected by a shipping agent or broker to transport a shipper's load to the consignee. The broker or agent provides the carrier with a delivery order and a bill of lading which authorizes release of the shipper's load. The delivery order requests that the water carrier deliver the cargo listed on the order for transportation to the consignee. The bill of lading is a contract between the shipper or shipper's agent and the motor carrier which governs the movement of the shipper's load to the consignee. Neither the delivery order nor the bill of lading prohibits the motor carrier from stripping the shipper's load from the container. The motor truck carriers have not been and are not parties to the ILA's collective-bargaining agreements covering longshore operations in Baltimore or Hampton Roads. Nor have they agreed to be bound by the rules on containers set forth in those agreements. Typically, the containers listed on the delivery order and bill of lading are the property of the shipping company responsible for the cargo's ocean transportation. Under established practice, the water carrier will not turn over its container to a motor carrier unless there is an equipment interchange agreement between the two carriers. Such an agreement sets out the rights and obligations of the

lessee-motor carrier when it has custody of the lessor-water carrier's containers. The equipment interchange agreement used by U.S. Lines in its dealings with Houff is typical of such agreements, and contains the following language which I find significant in determining industry practices:

United States Lines, Inc.

EQUIPMENT INTERCHANGE AGREEMENT

* * * * *

FOURTH: The lessee shall:

(a) complete promptly and expditiously the use for which the containers or chassis has been furnished to it and return the container or chassis to the terminal of the lessor from which it was received or to such other point as may be shown on the Equipment Interchange Receipt and Inspection Report or otherwise mutually agreed in writing;

* * * * *

(c) comply with any and appropriate formalities and requirements regarding the use, operation or transportation of the containers or chassis;

* * * * *

(e) have complete control and supervision of such containers or chassis while in its custody and possession; and shall control the detail of the work of any employee or agent operating or using said containers or chassis during such time any person operating, transporting, in possession of, or using any such container or chassis after the signing of said Equipment Interchange Re-

ceipt and Inspection Report and until such form is again signed upon return of the container or chassis to the lessor is not the agent or employee of the lessor for any purpose whatsoever; . . .[4]

As a matter of practice, when the motor carriers truck arrives at the pier, the driver presents the delivery order and bill of lading, locates and takes custody of the container and drives it through safety inspection. After satisfying the inspection, the truck-driver signs an interchange release receipt and hauls the containers away pursuant to instructions from his employer. Normally, the truckdriver hauls the container to the motor carrier's port area terminal.

Frequently, after hauling a full shipper's load from a pier to its port area terminal, a motor carrier will utilize its own employees to strip the full shipper's load from the container and stuff it into the motor carrier's container for transportation to the consignee. The motor carrier's decision to strip the full

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[4] On June 28, 1973, U.S. Lines subscribed to the Uniform Intermodal Interchange Agreement (UIIA) which now governs the terms of all U.S. Lines interchange agreements with other signatories of that agreement. Associated subscribed to UIIA on September 3, 1974. Houff became a signatory on March 25, 1974. Par. 4 of that agreement provides in relevant part:

4. Use of Equipment

4.1 Responsibility of User in Possession of Equipment.

a. User shall have the right of complete control and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same condition as received, ordinary wear and tear expected.

shipper's load may rest upon consideration of economy, safety, or state highway and bridge regulations.

In 1969, U.S. Lines handled 4,000 to 5,000 import containers through its Baltimore terminal. This number grew to 25,000 in 1974; 80 to 85 percent of these containers were full shippers' loads. In 1974, Baltimore ILA labor stripped 200-300 of these containers at the pier. Approximately 100 trucking concerns are engaged in hauling these containers away from U.S. Lines' pier.

I have studied the available records of the ILA-STA Joint Container Committee which was established under the 1968 contract, and has been retained to the present under subsequent contracts, to resolve ILA complaints alleging violations of the container rules.[5] It was, at the time, difficult to determine from these records whether the ILA's complaint in a particular case involved a shipper's load. However, where there was any doubt as to the type of load involved, I have assumed that such cases involved shippers' loads. From these records I have determined that, from September 1969 until November 1974, the ILA filed with the STA-ILA Joint Container Committee 26 complaints involving the stripping of 45 to 50 shippers' loads by trucking firms from containers. These complaints alleged that by permitting

[5] The 1968 contract provided, in pertinent part, as follows:

> A committee represented equally by management and Union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these rules. . . .

such stripping the named STA member had violated the STA-ILA container rules. Five of the ILA complaints involved a total of eight containers occurred prior to the CONASA-ILA container committee meeting on September 11-13, 1972, at Miami Beach. The remaining ILA complaitns involving the stripping of shippers' loads by truckers bear dates later than September 13, 1972.

The record does not reflect the annual volume of import containers received in the Hampton Roads port area. However, the Respondents submitted HRSA-ILA Container Grievance Committee records covering the period from October 1969 through and including October 1974. Again, these records do not clearly establish which cases involved full shippers' loads which were stripped by truck operators. However, I have resolved all doubts in favor of the shipper's load designation. In all, I found seven ILA complaints regarding shippers' loads allegedly stripped by truckers in violation of the HRSA-ILA contract. These complaints involved 30 containers. Of these seven cases, one, involving one import container bearing a full shipper's load, arose prior to the September 1972 CONASA-ILA Container Committee meeting in Miami, Florida.

3. The incidents involving Houff, Associated, and other truck carriers

On February 19, 1974, Houff sent one of its tractors to the U.S. Lines' Dundalk Marine Terminal, in the port of Baltimore, to pick up two U.S. Lines

20-foot containers, each a full shipper's load, with a total cargo weight of 78,810 pounds. ILA longshoremen had off-loaded the containers from a ship onto the pier. The delivery order and bill of lading issued to Houff for the U.S. Lines containers showed the cargo was destined to Union Carbide Corporation, Alloy, West Virginia. The Houff driver also picked up a third 20-foot container, a shipper's load from Lavino consigned to Merck & Co., Elkton, Virginia. ILA longshoremen had previously off-loaded this container from a ship into the pier. Upon determining that the three containers were overloaded, that they were unsafe, and that their rental was a needless expense, Houff stripped them and reloaded the cargo into Houff trailers.

On February 19, 1974, the ILA learned that Houff had stripped the three containers. On the following day, ILA complained to the STA-ILA Container Committee that Houff had violated "the container agreement," and that therefore liquidated damages of $1,000 and $2,000 were due the ILA from Lavino and U.S. Lines, respectively. On March 21, the STA-ILA Container Committee determined that U.S. Lines had violated the contract as alleged by ILA and assessed a fine of $2,000 against U.S. Lines. Similarly, on May 10, the committee found that Lavino was guilty of violating the container agreement, and assessed a fine of $1,000 against that firm. Thereafter, U.S. Lines and Lavino paid the fines to the STA-ILA Container royalty fund, and requested indemnification from Houff. U.S. Lines threatened to

terminate Houff's interchange agreement if Houff did not comply; Lavino threatened to have Houff entirely banned from the port. Houff did not respond to either requests. Effective July 22, 1974, U.S. Lines terminated its equipment interchange agreement with Houff. Lavino also terminated its equipment interchange agreement with Houff, 6 months later.

Following cancellation of their equipment interchange agreement with Houff, U.S. Lines and Lavino have refused to release containers to Houff. Thus, for example, in January 1975, U.S. Lines denied a consignee's request that two U.S. Lines containers containing shippers' loads of twine be released to Houff for movement from Norfolk to Staunton, Virginia. U.S. Lines advised the consignee that it would not release containers because Houff was not party to a U.S. Lines interchange agreement.

On September 24, 1974, after being selected by a broker and receiving delivery orders and bills of lading, Associated sent two tractors to the Marine Terminal, Norfolk, Virginia. There, in accordance with their documents, the Associated drivers picked up eight shippers' loads in containers either owned or leased to U.S. Lines, which had been off-loaded from a U.S. Lines ship by ILA longshoremen. When the eight containers arrived at Associated's Virginia Beach terminal, 7 or 8 miles from the Marine Terminal, the manager decided to strip all eight containers and reload the shippers' loads into Associated containers for shipment to consignees in Tennessee and North Carolina.

On October 5, 1974, a U.S. Lines representative and an ILA representative discovered that the eight U.S. Lines containers had been stripped at Associated's Virginia Beach terminal. Thereafter, the ILA complained to the HRSA-ILA Container Committe which met on October 31 and fined U.S. Lines $8,000. In its leter notifying U.S. Lines of the fine, HRSA explained:

> The prime reason for imposing a violation of these containers was due to the fact that Associated Transport, Inc., representatives at the meeting would not clarify as to whether the containers were stripped within the 50 miles radius or delivered to their respective destinations, but only stated that they supported the contents of the letter from the Tidewater Motor Carriers Association dated June 7, 1974.[6]

By letter of January 3, 1975, U.S. Lines demanded payment of $8,000 from Associated to cover the fines imposed by the HRSA-ILA Container Committee. Associated did not comply. On February 15, U.S. Lines

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[6] The letter referred to by HRSA was addressed to Jack W. Mace, HRSA's executive secretary, and set forth the Tidewater Motor Truck Association's position as to HRSA's container rule, as follows:

1. Carriers would not allow the ILA to inspect the records or facilities verifying movements of containers.
2. That carriers reject payment of any penalty passed on to them by steamship lines.
3. That carriers not be required to move containers to destination under a house-to-house basis unless exclusive use of vehicle was authorized.

discontinued interchanging equipment with Associated. On March 20, 1975, U.S. Lines formally terminated its interchange agreement with Associated.

In circumstances similar to those found in the Associated and the Houff incidents, involving shippers' loads, the HRSA-ILA Container Committee levied two additional $1,000 fines on U.S. Lines. One of these ILA complaints involved one stripped container at Pilot Freight Carriers' Portsmouth, Virginia, terminal. A second complaint described a stripped container at Thurston Motor Lines' Chesapeake, Virginia, terminal. Both truck terminals are within 50 miles of the center of Hampton Roads. Pilot did not respond to U.S. Lines' February 5 demand for reimbursement. By letter of February 14, 1975, U.S. Lines referred to its demand and warned Pilot that "after today the interchange of equipment with you" would be discontinued "until the situation involved is settled."

The record does not reflect whether U.S. Lines sent a similar letter to Thurston. However, by letter dated February 5, 1975, U.S. Lines warned that Thurston would be held liable for stripping a full shipper's load destined for a consignee located more than 50 miles from Hampton Roads. The record does not disclose whether Thurston suffered a loss of its U.S. Lines interchange agreement.

4. The suspension of the 1974 CONASA-ILA Container Rules

In late March 1975, ILA notified CONASA of its intent to exercise its right [7] to suspend the rules on containers in their collective-bargaining agreements covering Baltimore, Hampton Roads, and all other CONASA ports, because of "phony warehouse practices." On April 28, the rules on containers were suspended. Thereafter, deepsea ILA labor at the affected piers stripped all import containers of cargo consigned to warehouses within 50 miles of the center of the port.[8] Freight handlers stripped the cargo into

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[7] Rule 8 of the CONASA-ILA rules on containers provides:

> These Rules shall be in effect for the term of the CONASA-ILA Agreement, provided, however, that either party shall have the right to cancel the Rules on Containers at any time on or after December 1, 1974, on thirty (30) days written notice of a desire to renegotiate the provisions of these Rules.

[8] Rule 2B(4) of the 1974 CONASA-ILA rules on containers provides as follows with regard to warehousing:

> Cargo in containers referred to below shall not be . . . discharged by ILA labor:
>
> * * * * *
>
> B. Import Cargo:
>
> * * * * *
>
> (4) Containers of a qualified consignee discharged at a bona fide public warehouse within the "geographic area" which comply with all of the following conditions:
>
> 1. The container cargo is warehoused at a bona fide public warehouse.

[Footnote continued on page 159a]

motor transport carriers' containers for delivery to the warehouse. The ILA's action caused daleys of 5 to 8 days in the movement of container cargo from the piers to warehouses. The suspension also resulted in the diversion of import container shipments from the Hampton Roads port area.

On May 30, 1975, following negotiations, CONASA and ILA executed a supplemental agreement which, they announced, "clarified and reinstated" the 1974 CONASA-ILA container rules. Rule 2B(4) in the supplement provided:

> Cargo in containers referred to below shall not be . . . discharged by ILA labor:
>
> * * * * *
>
> B. Import Cargo
>
> * * * * *

---

[8] [Continued]

> 2. The qualified consignee pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days, and;
>
> 3. The cargo being warehoused (a) in the normal course of the business of the qualified consignee; (b) title to such goods has not been transferred from the qualified consignee to another. The carrier on request will furnish all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2, and 3 have been met. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1. It is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a consolidator or deconsolidated.

(4) Containers of a qualified consignee discharged at a bona fide public warehouse within the 'geographic area' which comply with all of the following conditions:

1. The container cargo is warehoused at a bona fide public warehouse

2. The qualified consignee pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days; and stores the cargo for a minimum period of 30 days; and

3. The cargo being warehoused (a) in the normal course of the business of the qualified consignee; (b) title to such goods has not been transferred from the qualified consignee to another.

The carrier on request will furnish all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2, and 3 have have been met. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1. It is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a consolidator or de-consolidator.

[Clarification: In keeping with prior CONASA-ILA decisions trucking stations where containers are unloaded within the geographic area do not constitute bona fide public warehouses even where cargo is destined for delivery outside the geographic area.]

Since May 30, 1975, these warehouse rules and the "Clarification" have been in effect in Baltimore, Hampton Roads, and all other CONASA ports.

B. *Analysis and Conclusions*

The General Counsel and the Charging Parties contend that Respondents violated Section 8(e) of the Act by maintaining, giving effect to, and enforcing rule 1(a)(3) and rule 2B(2) of the CONASA-ILA rules on containers in their 1974-77 contracts. The General Counsel also contends that, by imposing fines upon U.S. Lines and Lavino, ILA violated Section 8(b)(4)(ii)(B) og the Act. According to the General Counsel and Charging Parties, these portions of the CONASA-ILA container rules and the attempts to enforce them by fines constituted an attempt by ILA to acquire work traditionally done by employees of motor carriers.

The Respondents' defense is that rule 1(a)(3) and rule 2(B) and their enforcement represented an effort to preserve work traditionally performed by ILA labor and that therefore such efforts were authorized by principles set forth in *National Woodwork Manufacturers Association et al.* v. *N.L.R.B.*, 386 U.S. 612 (1967), and *American Boiler Manufacturers Association* v. *N.L.R.B.*, 404 F.2d 547 (C.A. 8, 1968), cert. denied 398 U.S. 960 (1970). Under those principles, if ILA's conduct and contractual agreements with CONASA, HRSA, and STA, of which the General Counsel complains, were designed to preserve work to which ILA represented-employees of HRSA's

and STA's employer-members were entitled, then both the conduct and the agreements would be primary in purpose and would not run afoul of the Act. However, if ILA's real object was to reach out for work traditionally done by employees not represented by ILA, or work to which ILA had waived all claims, the challenged container rules and the pressures on HRSA and STA would have had a secondary object violative of Section 8(e) and Section 8(b)(4)(ii)(B) of the Act, respectively. Here, "[t]he touchstone is whether the agreement or its maintenance is addresesd to the labor relations of the contracting employer *vis-à-vis* his own employees." *National Woodwork Manufacturers Association, supra,* 386 U.S. at 645. Applying the *National Woodwork* test as did the Board in *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc., and Twin Express, Inc.)*, 221 NLRB 956 (1975), enfd. 537 F.2d 706 (1976),[9] I find merit in the General Counsel's and the Charging Parties' contentions.

In *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc.* and *Twin Express, Inc.)*, *supra,* the Board found that the ILA was attempting to obtain the work of stuffing and stripping less-than-container load cargo or less-than-trailer load cargo, which consolidators traditionally performed at

[9] On July 9, 1976, International Longshoremen's Association, AFL-CIO, and New York Shipping Association, Inc., filed a petition for rehearing in Docket No. 75-4266 which the U.S. Court of Appeals for the Second Circuit denied on August 6, 1976.

their own off-pier facilities with their own employees, who were not in the unit represented by the ILA. The Board observed that "[t]he traditional work of the longshoremen represented by ILA has been to load and unload ships. When necessary to perform their loading and unloading work, longshoremen have been required to stuff and strip containers on the piers." (221 NLRB at 959.) The Board then found (*Id.* at 960) that:

> the on-pier stripping and stuffing work performed by longshoremen as an incident of loading and unloading ships does not embrace the work traditionally performed by Consolidated and Twin at their off-pier premises . . . . Yet, ILA's demands here could only be met if the work traditionally performed off the pier by employees outside the longshoremen unit were taken over and performed at the pier by longshoremen represented by ILA.

On these facts, the Board held that the 1971 container rules negotiated between ILA and the New York Shipping Association (these same rules appeared in the 1971 ILA contracts covering the Baltimore and Hampton Roads port areas, respectively) covering LTL or consolidated full container loads did not have "a lawful primary object" (*Consolidated Express, supra,* 221 NLRB at 961), and therefore violated Section 8(e) of the Act. The Board also held that fines imposed by ILA upon shipping companies who were members of the New York Shipping Association also violated Section 8(b)(4)(ii)(B) of the Act.

Here, as in *Consolidated Express*, the facts show that ILA's demands can only be satisfied "if the work traditionally performed off the pier by employees outside the longshoremen unit were taken over and performed at the pier by longshoremen represented by ILA." Thus, the history of the longshoremen's work tradition in Baltimore and Hampton Roads shows that their role in handling break-bulk import cargo ended at the head of the pier, where an ILA freight handler picked up the cargo and loaded it onto a truck. Thereafter, the fate of that cargo was the responsibility of the motor carrier, as set forth in the bill of lading.

The advent of containerization in the ports of Baltimore and Hampton Roads did not change the traditional role of the ILA longshoremen. The motor carriers have treated import shippers' loads destined for consignees located more than 50 miles from the center of the port of entry much as they did break-bulk cargo. For, with very rare exceptions, motor carriers have freely picked up the steamship company's containers mounted on wheeled trailers and hauled them to the consignee in accordance with the bills of lading. The motor carriers have also traditionally hauled such containers to their own truck terminals and have stripped the shippers' loads from them and are loaded into their own trailers, using truck terminal employees, whenever considerations of safe regulation, safety, or economy persuaded a motor carrier to take that precaution.

To counter the General Counsel's showing, Respondents presented evidence to show that ILA, CONASA, HRSA, STA, and various steamship and motor truck employers in the Baltimore and Hampton Roads port areas understood that such shortstopping of shippers' loads violated the container rules in the 1968 and 1971 contracts. However, the plain language of the 1968 and 1971 rules limited to "LTL loads or consolidated full container loads" the "complete control" language of the full equipment interchange agreements used by U.S. Lines in dealing with motor carriers, and the paucity of grievances involving shippers' loads in the ports of Baltimore and Hampton Roads prior to the September 1972 CONASA-ILA meeting at which ILA first sought adoption of rule 1(a)(3) and 2B(2) cast doubt on the Respondents' claim. The fatal weakness in Respondents' defense is its failure to rebut the General Counsel's showing that, in the performance of contracts to haul cargo from a pier to the consignee, motor carriers have traditionally utilized their own employees whenever economy, safety, or government regulations required the stripping of a shipper's load destined to a consignee outside the 50-mile zone.

From the foregoing and the record as a whole, I find that the traditional on-pier work of longshoremen has not included the work performed by the employees of motor carriers, as Associated and Houff, at their off-pier facilities. Thus if ILA's demand is to be satisfied here, motor carriers seeking to do business with employer-members of HRSA and STA

would be obliged to assign this work to ILA labor at the pier. Indeed, in order to avoid the sanctions revealed in this case, motor carriers who might otherwise exercise their discretion to transfer cargo after leaving a CONASA-ILA pier would permit ILA labor to routinely strip all shippers' destined outside the 50-mile zone, and thus transform containers into cargo nets.

Here, I find as the Board found in *Consolidated Express, supra,* 221 NLRB at 960, "the *National Woodwork, supra,* and *American Boiler Manufacturing Association* v. *N.L.R.B.* cases are distinguishable from the instant case since, in those cases, the very work claimed had once been performed, exclusively, by employees in the units represented by the respondent organizations therein." Thus, here, as in *Consolidated Express, supra,* rules 1(a)(3) and 2B(2) of the 1974-77 CONASA-ILA rules on containers have no valid work-preservation purpose. Their purpose is to cause U.S. Lines, Lavino, and other employer-members of HRSA and STA to cease doing business with motor carriers who refuse to surrender to ILA's attempt to acquire work now done by the motor carriers' employees. I find therefore that by maintaining, giving effect to, and enforcing the contracts and agreements known as the rules on containers, as set forth in the 1974-77 collective-bargaining agreements and as reaffirmed in their supplemental agreement of May 30, 1975, Respondents CONASA, HRSA, and ILA violated Section 8(e) of the Act. I also find that by threatening to assess and by assessing liquidated

damages as provided in those agreements, thereby threatening, restraining, and coercing CONASA, HRSA, STA, U.S. Lines, and Lavino, with an object being to force those persons engaged in commerce to cease doing business with Associated, Houff, Pilot, and Thurston, Respondent ILA violated Section 8(b)(4)(ii)(B) of the Act.

I also find that an objective of the suspension of the rules on containers on April 28, 1975, was to pressure CONASA, HRSA, STA, and their employer-members to cease doing business with motor carriers who refused to adhere to rules 1(a)(3) and 2B(2). In making this finding, I have looked in large part at the timing of ILA's notice of suspension in late March. For it was in March and February 1975 that U.S. Lines suspended its equipment interchange agreements with Associated, Thurston, and Pilot because they stripped shippers' loads destined beyond the 50-mile zone and demonstrated the apparent refusal of the motor carriers to surrender to ILA pressure. Further evidence of ILA's unlawful intent is contained in the declaration in the CONASA-ILA supplemental agreement of May 30, 1975, that "trucking stations where containers are unloaded within the geographic area [50 miles of the center of each port] do not constitute bona fide public warehouses even where cargo is destined for delivery outside the geographic area." Having found that ILA's suspension of the 1974-77 CONASA-ILA rules on containers was motivated at least in part by the same cease-doing-business object which provoked the fines

against U.S. Lines and Lavino, I further find that, by that conduct, ILA again violated Section 8(b)(4)(ii)(B) of the Act.

THE REMEDY

Having found Respondent ILA and Respondents HRSA and CONASA engaged in unfair labor practices in violation of Section 8(e) of the Act, and Respondent ILA engaged in unfair labor practices in violation of Section 8(b)(4)(ii)(B) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action which I find necessary to effectuate the policies of the Act.

Upon the basis of the foregoing findings and conclusions and the entire record in this case, and pursuant to Section 10(c) of the Act, I issue the following recommended:

ORDER [10]

A. Respondents International Longshoremen's Association, AFL-CIO, Hampton Roads District Council, International Longshoremen's Association, AFL-CIO, ILA Locals 846, 862, 970, 1248, 1458, 1624, 1736, 1783, 1784, 1819, 1840, and 1970, AFL-CIO, their officers, agents, and successors shall:

---

[10] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Maintaining, giving effect to, and enforcing the contracts and agreements known as the CONASA-ILA rules on containers to the extent and in the manner said contracts and agreements have been found to be unlawful herein, or any other contract or agreement, express or implied, whereby CONASA and HRSA, on behalf of its employer-members, agree to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

(b) Continuing to seek or impose fines against employer-members of HRSA, including U.S. Lines, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require such persons to cease doing business with Associated Transport, Inc., Houff Transfer Inc., Pilot Freight Carriers, Inc., Thurston Motor Lines, Inc., or any other employer-members of Tidewater Motor Truck Association.

(c) In any other manner, including the suspension of the CONASA-ILA rules on containers, coercing or restraining CONASA, HRSA, or any of HRSA's employer-members, or any other person engaged in commerce in an industry affecting commerce, where an object thereof is to force or require such persons to cease doing business with Associated Transport, Inc., Houff Transfer, Inc., Pilot Freight Carriers, Inc., Thurston Motor Lines, Inc., or any other employer-members of Tidewater Motor Truck Association.

2. Take the following affirmative action which is found necessary to effectuate the policies of the Act:

(a) Notify all of their members who are employed by employer-members of HRSA that any and all of the provisions known as the CONASA-ILA rules on containers which have been negotiated between ILA and CONASA on behalf of HRSA which restrain, restrict, limit, fine, or prohibit handling in the customary manner, containers bearing shippers' loads, have been found to be void and unenforceable with respect to Associated Transport, Inc., Houff Transfer, Inc., Pilot Freight Carriers, Inc., Thurston Motor Lines, Inc., or any other employer-member of Tidewater Motor Truck Association.

(b) Post at all of their respective business offices, meeting halls, and dispatch halls copies of the attached notice marked "Appendix A." [11] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by a representative of each Respondent labor organization named in this section of the Order, shall be posted by each of the said labor organizations immediately upon receipt thereof, and be maintained by each of them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are

[11] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

customarily posted. Reasonable steps shall be taken by said labor organizations to insure that these notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps each of the said labor organizations has taken to comply herewith.

B. Respondents International Longshoremen's Association, AFL-CIO; Atlantic Coast District Council, International Longshoremen's Association, AFL-CIO, ILA Locals 333, 921, 953, 1355, and 1429, AFL-CIO, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Maintaining, giving effect to, invoke, or enforcing the contracts and agreements known as the CONASA-ILA rules on containers to the extent and in the manner said contracts and agreements have been found to be unlawful herein, or any other contract or agreement, expressed or implied, whereby CONASA and STA, on behalf of its employer-members, agree to cease and refrain from doing business with any other person in violation of Section 8(e) of the Act.

(b) Continuing to seek or impose fines against employer-members of STA, including U.S. Lines and Lavino, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require such persons to cease doing business with Houff Transfer, Inc.

(c) In any other manner, including the suspen-

sion of the CONASA-ILA rules on containers, coercing or restraining CONASA, STA, or any STA's employer-members, or any other person engaged in commerce in an industry affecting commerce, where an object thereof is to force or require such persons to cease doing business with Houff Transfer, Inc.

(2) Take the following affirmative action which is found necessary to effectuate the policies of the Act:

(a) Notify all of their members who are employed by employer-members of STA that any and all of the provisions known as the CONASA-ILA rules on containers which have been negotiated between ILA and CONASA, on behalf of STA, which restrain, restrict, limit, fine, or prohibit handling in the customary manner, containers bearing shippers' loads, have been found to be void with respect to Houff Transfer, Inc.

(b) Post at all of their respective business offices, meeting halls, and dispatch halls copies of the attached notice marked "Appendix B."[12] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by a representative of each Respondent labor organization named in this section of the Order, shall be posted by each of the said labor organizations immediately upon receipt thereof, and be maintained by each of them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by said labor organizations to insure that

[12] See fn. 11, *supra*.

these notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps each of the said labor organizations has taken to comply herewith.

C. Respondents Council of North Atlantic Shipping Associations, (CONASA), and Hampton Roads Shipping Association (HRSA), their respective officers, agents, successors, and assigns, shall:

1. Cease and desist from maintaining giving effect to, and enforcing the contracts and agreements known as the CONASA-ILA rules on containers to the extent and in the manner said contracts and agreements have been found to be unlawful herein, or any other contract or agreement, expressed or implied, whereby Respondent CONASA, on behalf of its member, HRSA, and on behalf of its employer-members, including U.S. Lines, agree to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

2. Take the following affirmative action which is found necessary to effectuate the policies of the Act:

(a) HRSA shall notify U.S. Lines and all other employer-members of HRSA that any and all provisions of the contracts and agreements known as the CONASA-ILA rules and containers, which have been negotiated between ILA and CONASA on behalf of HRSA, and which restrain, restrict, limit, fine, or prohibit handling in the customary manner, contain-

ers bearing shippers' loads, have been found to be void and unenforceable with respect to Associated Transport, Inc., Pilot Freight Carriers, Inc., Thurston Motor Lines, Inc., or any other employer-member of Tidewater Motor Truck Association.

(b) CONASA shall notify U.S. Lines and all other members of HRSA that any and all of the provisions known as the CONASA-ILA rules on containers which have been negotiated between ILA and CONASA on behalf of HRSA which restrain, restrict, limit, fine, or prohibit handling in the customary manner, containers bearing shipper's loads, have been found to be void and unenforceable with respect to Associated Transport, Inc., Pilot Freight Carriers, Inc., Thurston Motor Lines, Inc., or other employer-member of Tidewater Motor Truck Association.

(c) HRSA shall mail to U.S. Lines and each of HRSA's other employer-members, and post at its Norfolk, Virginia, office copies of the attached notice marked "Appendix C." [13] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent HRSA's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employer-members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

[13] See fn. 11, *supra*.

(d) CONASA shall mail to HRSA, U.S. Lines, and each of the other employer-members of HRSA, and post at CONASA's main office in New York, New York, copies of the attached notice marked "Appendix D." [14] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent CONASA's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to member associations are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 5, in writing, with 20 days from the date of this Order, what steps Respondents CONASA and HRSA have taken to comply herewith.

[14] See fn. 11, *supra*.

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which all sides had the opportunity to present their evidence, it has been found that we violated the law. Accordingly, we post this notice and we will keep the promises we make in this notice.

WE WILL NOT enter into, maintain in effect, give effect to, invoke, or in any other manner or by any means enforce the contract and agreements known as the CONASA-ILA rules on containers, rules 1(a)(3) and 2B(2) as set forth in the HRSA-ILA collective-bargaining agreement effective from October 30, 1974, to September 30, 1977, and as restated by the ILA-CONASA Memorandum of Agreement effective May 30, 1975, or any other contract or agreement express or implied whereby the Council of North Atlantic Shipping Associations, and the Hampton Roads Shipping Association, on behalf of its employer-members, agree to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

WE WILL NOT seek or impose fines against employer-members of the Hampton Roads Shipping Association, including United States Lines, Inc., or any other person engaged in commerce or in

an industry affecting commerce, where an object thereof is to force or require such persons to cease doing business with Associated Transport, Inc., Houff Transfer, Inc., Pilot Freight Carriers, Inc., Thurston Motor Lines, Inc., or any other member of Tidewater Motor Truck Association.

WE WILL NOT in any other manner, including the suspension of the CONASA-ILA rules on containers, coerce, or restrain the Council of North Atlantic Shipping Associations, Hampton Roads Shipping Association, or any of Hampton Roads Shipping Association's employer-members, or any other person engaged in commerce in an industry affecting commerce, where an object thereof is to force or require such person to cease doing business with Associated Transport, Inc., Pilot Freight Carriers, Inc., Thurston Motor Lines, Inc., and any other employer-member of Tidewater Motor Truck Association.

WE WILL and do hereby notify our members, and other individuals employed by Hampton Roads Shipping Association, or any of its employer-members, that any and all of the provisions of the contracts and agreements known as the CONASA-ILA rules on containers which have been negotiated between ILA and CONASA on behal fof Hampton Roads Shipping Association, which restrain, restrict, limit, fine, or prohibit handling, in the customary manner, containers bearing shippers' loads have been found void and

unenforceable with respect to Associated Transport, Inc.

INTERNATIONAL
LONGSHOREMEN'S
ASSOCIATION, AFL-CIO,
LOCALS 846, 862, 970,
1248, 1458, 1624, 1736,
1783, 1784, 1819, 1840, &
1970

HAMPTON ROADS DISTRICT
COUNCIL, INTERNATIONAL
LONGSHOREMEN'S
ASSOCIATION, AFL-CIO

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which all sides had the opportunity to present their evidence, it has been found that we violated the law by committing unfair labor practices. Accordingly, we post this notice and we will keep the promises we make in this notice.

WE WILL NOT enter into, maintain in effect, give effect to, invoke, or in any other manner or by any means enforce the contract and agreements known as the CONASA-ILA rules on containers, rules 1(a)(3) and 2B(2) as set forth in the Steamship Trade Association of Baltimore, Inc. ILA collective-bargaining agreement effective from October 30, 1974, to September 30, 1977, and as restated by the ILA-CONASA memorandum of agreement effective May 30, 1975, or any other contract or agreement express or implied whereby the Council of North Atlantic Shipping Associations, and the Steamship Trade Association of Baltimore, Inc., on behalf of its employer-members, agree to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

WE WILL NOT seek or impose fines against employer-members of the Steamship Trade Association of Baltimore, Inc., including United States Lines, Inc., and Lavino Shipping Company, or any other person engaged in commerce or in an industry affecting commerce, where an

object thereof is to force or require such persons to cease doing business with Houff Transfer, Inc.

WE WILL NOT in any other manner, including the suspension of the CONASA-ILA rules on containers, coerce or restrain the Council of North Atlantic Shipping Associations, Steamship Trade Association of Baltimore, Inc., or any of Steamship Trade Association's employer-members, or any other person engaged in commerce in an industry affecting commerce, where an object thereof is to force or require such person to cease doing business with Houff Transfer, Inc.

WE WILL and do hereby notify our members, and other individuals employed by Steamship Trade Association of Baltimore, Inc., or any of its employer-members, that any and all of the provisions of the contracts and agreements known as the CONASA-ILA rules on containers which have been negotiated between ILA and CONASA on behalf of Steamship Trade Association of Baltimore, Inc., which restrain, restrict, limit, fine, or prohibit handling in the customary manner, containers bearing shippers' loads have been found void and unenforceable with respect to Houff Transfer, Inc.

INTERNATIONAL
LONGSHOREMEN'S
ASSOCIATION, AFL-CIO,
LOCALS 333, 921, 953,
1355, & 1429

ATLANTIC COAST DISTRICT
COUNCIL INTERNATIONAL
LONGSHOREMEN'S
ASSOCIATION, AFL-CIO

APPENDIX C

NOTICE TO ALL EMPLOYEES AND
ALL EMPLOYER-MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which all sides had the opportunity to present their evidence, it has been found that we violated the law by committing unfair labor practices. Accordingly, we post this notice and we shall keep the promises we make in this notice.

WE WILL NOT enter into, maintain in effect, give effect to, invoke or in any manner or by any means enforce the contracts and agreements known as the CONASA-ILA rules on containers, rules 1(a)(3) and 2B(2), as set forth in the HRSA-ILA collective-bargaining agreement effective from October 1, 1974, to September 30, 1977, and as restated by the CONASA-ILA Memorandum of Agreement effective May 30, 1975, or any other contract or agreement, express or implied, whereby CONASA, on behalf of HRSA, or HRSA on behalf of employer-members, agrees to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

WE WILL and do hereby notify United States Lines, Inc., and all other employer-members of HRSA that any and all of the provisions of the contracts and agreements known as the CONASA-ILA rules on containers which have been negotiated between ILA and CONASA on behalf of

Hampton Roads Shipping Association, which restrain, restrict, limit, fine, or prohibit handling, in the customary manner, containers bearing shippers' loads have been found void and unenforceable with respect to Associated Transport, Inc., Pilot Freight Carriers, Inc., Thurston Motor Lines, Inc., and any other employer-members of Tidewater Motor Truck Association.

HAMPTON ROADS SHIPPING ASSOCIATION

APPENDIX D

NOTICE TO ALL EMPLOYEES AND ASSOCIATION-MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which all sides had the opportunity to present their evidence, it has been found that we violated the law by committing unfair labor practices. Accordingly, we post this notice and we shall keep the promises we make in this notice.

WE WILL NOT enter into, maintain in effect, give effect to, invoke, or in any manner or by any means enforce the contracts and agreements known as the CONASA-ILA rules on containers, rules 1(a)(3) and 2B(2), as set forth in the HRSA-ILA collective-bargaining agreement effective from October 30, 1974, to September 30, 1977, and as restated by the CONASA-ILA Memorandum of Agreement effective May 30, 1975, or any other contract or agreement, express or implied, whereby CONASA, on behalf of HRSA, or HRSA on behalf of its employer-members, agrees to cease or refrain from doing business with any other person in violation of Section 8(e) of the Act.

WE WILL and do hereby notify United States Lines, Inc., and all other employer-members of HRSA that any and all of the provisions of the contracts and agreements known as the CONASA-ILA rules on containers which have been negoti-

ated between ILA and CONASA on behalf of Hampton Roads Shipping Association, which restrain, restrict, limit, fine, prohibit handling, in the customary manner, containers bearing shipper's loads have been found void and unenforceable with respect to Associated Transport, Inc.

COUNCIL OF NORTH
ATLANTIC SHIPPING
ASSOCIATIONS

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Supreme Court, U. S.
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APPENDIX

VOLUME I—(pp. 1-234)

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 10, 1980
CERTIORARI GRANTED JANUARY 21, 1980

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Int'l Longshoremen's Assoc., AFL-CIO & Council of North Atlantic Shipping Assocs., et al.

Case Nos.: 5-CC-791, 5-CE-48, 5-CC-792, 5-CE-49, 5-CC-793, 5-CE-50, 5-CC-794, 5-CE-51

5.7.75 Charge filed in 5-CC-791

5.7.75 Charge filed in 5-CE-48

5.12.75 Amended charge filed in 5-CC-791

5.12.75 Amended charge filed in 5-CE-48

5.12.75 Charge filed in 5-CC-793

5.12.75 Charge filed in 5-CE-50

5.12.75 Charge filed in 5-CC-792

5.12.75 Charge filed in 5-CE-49

5.13.75 Charge filed in 5-CC-794

5.13.75 Charge filed in 5-CE-51

9.25.75 Order Consolidating Cases, Complaint and Notice of Hearing in 5-CC-791, 5-CE-48, 5-CC-793, 5-CE-50, 5-CC-794, and 5-CE-51, dated

10.1.75 Order Consolidating Cases Consolidated Complaint and Notice of Hearing in Cases Nos. 5-CC-792 and 5-CE-49, dated

10.7.75 Petitioners International Longshoremen's Assoc., AFL-CIO, et al.'s Answer in 5-CC-791, 5-CE-48, 5-CC-793, 5-CE-50, 5-CC-794, 5-CE-51, received

10.10.75 Acting Regional Director's teletype denying request for postponement of hearing in Cases Nos. 5-CC-791, 5-CE-48, 5-CC-793, 5-CE-50, 5-CC-794, and 5-CE-51, dated

10.10.75 Acting Regional Director's teletype in Case Nos. 5-CC-791, 5-CC-792, 5-CC-793, 5-CC-794, 5-CE-48, 5-CE-49, 5-CE-50, and 5-CE-51, dated

10.10.75 Acting Regional Director's Order Consolidating Cases Nos. 5-CC-791, 5-CE-48, 5-CC-792, 5-CE-49, 5-CC-793, 5-CE-50, 5-CC-794, and 5-CE-51, dated

10.14.75 Petitioners International Longshoremen's Assoc., AFL-CIO, et al.'s Answer in 5-CC-792 and 5-CE-49, received

10.15.75 Hearing opened

12.9.75 Administrative Law Judge's Order receiving Joint Exhibit No. 1 in evidence, and closing hearing

8.19.76 Administrative Law Judge's Decision issued

9.14.76 Administrative Law Judge's Errata, dated

9.13.76 Petitioners International Longshoremen's Association, AFL-CIO, its affiliated District Council and Locals Exceptions to the Decision and Recommended Order of the Administrative Law Judge, received

9.13.76 Petitioners Council of North Atlantic Shipping Associations and Hampton Roads Shipping Association's Exceptions to the Decision of the Administrative Law Judge, received

9.23.76 Charging Party Houff Transfer, Inc.'s Statement of Cross-Exceptions to the Decision of the Administrative Law Judge, received

8.12.77 Decision and Order issued by the National Labor Relations Board

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Int'l Longshoremen's Assoc., AFL-CIO & New York Shipping Assoc., Inc.

Case Nos.: 2-CC-1364, 2-CE-75 & 2-CC-1365

5.6.75 Charge in 2-CC-1364 filed

5.6.75 Charge in 2-CE-75 filed

5.7.75 Charge filed in 2-CC-1365

3.10.75 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated

3.16.76 Puerto Rico Maritime Shipping Authority's and Puerto Rico Marine Management, Inc.'s request for an extension of time to answer the complaint, dated

3.19.76 Regional Director's Order Extending Time to Answer, dated

3.19.76 Petitioner Employer's Answer, received

3.25.76 Petitioner Union's Answer, received

4.1.76 Statement of Puerto Rico Maritime Shipping Authority, Puerto Rico Marine Management, Inc., Maritime Transportation Management, Inc. and Trans American Trailer Transport, Inc., dated

6.8.76 Regional Director's Order Rescheduling Hearing, dated

9.28.76 Regional Director's Order Rescheduling Hearing, dated

11.29.76 Petitioners' letter requesting postponement of hearing, dated

11.30.76 Regional Director's Order Rescheduling Hearing, dated

2.11.77 Petitioner Union's letter requesting hearing be rescheduled, dated

2.15.77 Regional Director's Order Rescheduling Hearing, dated

4.5.77 Petitioner Employer's Amended Answer, received

4.7.77 Petitioner Union's First Amendment Answer, dated

4.21.77 Regional Director's Order Rescheduling Hearing, dated

6.21.77 Petitioners' Application to Take Depositions, dated

6.22.77 Petitioners' Application and Demand for Production of Documents, dated

6.23.77 Regional Director's Order Amending Complaint, dated

6.23.77 General Counsel's Motion to Strike Petitioners' Affirmative Defenses, dated

6.27.77 Regional Director's letter denying Petitioners' request for production of documents and application to take depositions, dated

6.30.77 Petitioners' letter requesting review of Regional Director's denial of Petitioners' request for production of documents and application to take depositions, dated

7.6.77 Petitioner Employer's Reply to Motion to Strike Defenses and Cross-Motion to Dismiss Complaint, dated

7.11-77 Hearing opened

7.11.77 Petitioner Union's Opposition to General Counsel's Motion to Strike Petitioners' Affirmative Defenses, dated

8.5.77 Administrative Law Judge's Order rescheduling hearing, dated

8.22.77 General Counsel's Opposition to Petitioner Employer's Cross-Motion to Dismiss, dated

8.22.77 General Counsel's Reply Statement in Support of Motion to Strike Defenses, dated

9.12.77 Administrative Law Judge's Order granting General Counsel's motion to strike Petitioners' affirmative defenses and denying Petitioner Employer's motion to dismiss complaint, dated

9.15.77 Petitioners' letter requesting special permission to appeal the Administrative Law Judge's order striking all of Petitioners' affirmative defenses, dated

9.16.77 General Counsel's telegram opposing Petitioners' request for special permission to appeal Administrative Law Judge's Order, dated

9.16.77 Board's telegraphic order denying Petitioners' request for special permission to appeal Administrative Law Judge's Order, dated

10.6.77 Administrative Law Judge's Order rescheduling hearing, dated

11.2.77 Administrative Law Judge's Order rejected Petitioners' affidavits and exhibits attached thereto and advising they shall be placed in the rejected exhibit file, and cancelling the scheduled hearing and closing the hearing, dated

11.2.77 General Counsel's letter objecting to the receipt of the affidavit into evidence or to oral testimony by the witness Gohlke and request that this evidence be rejected and the hearing closed, dated

12.7.77 Stipulation entered into by the parties

12.22.77 Administrative Law Judge's Order approving the stipulation of the parties and transferring proceeding to the Board, dated

1.4.78 Board's Order Approving Stipulation and Transferring Proceeding to the Board, dated

1.27.78 General Counsel's Brief to the National Labor Relations Board, dated

1.31.78 Petitioner Union's Brief to the Board, dated

2.1.78 Petitioner Employer's Proposed Findings of Facts and Conclusions of Law and Supporting Memorandum of Law, dated

2.13.78 General Counsel's Reply Brief to the National Labor Relations Board, dated

5.30.78 Decision and Order issued by the National Labor Relations Board

BEFORE:

The Hon. LEONARD M. WAGMAN, Administrative Law Judge

APPEARANCES:

BRUCE D. ROSENSTEIN, Esq.

NLRB, Fifth Region, 1019 Federal Building, Hopkins Plaza, Baltimore, Maryland 21201, counsel for the General Counsel.

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(Herbert & Bohannon) Suite 402, Plaza One, Norfolk, Va. 23510, on behalf of Tidewater Motor Transport Assoc. and Associated Transport, Charging Parties.

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(Kelsey & Kelsey) 1408 Maritime Tower, Norfolk, Va. 23510, on behalf of Hampton Roads District Council of the ILA and Locals 1970, 862, 1248, 846, 970, 1458, 1624, 1784, 1819 and 1840, AFL-CIO, Respondents.

THOMAS W. GLEASON, Esq.

17 Battery Place, New York, New York 10004, on behalf of International Longshoremen's Association, the Atlantic Coast District Council of the ILA and all other locals, Respondents.

C. P. LAMBOS, Esq.

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—and—

FRANCIS SCANLAN, Esq.

(Deasey, Scanlan & Bender, Ltd) Two Girard Plaza, Philadelphia, Pa., on behalf of Council of North Atlantic Shipping Assoc, Party to the Contract.

BRADEN VANDEVENTER, Esq.

(Vandeventer, Black, Meredith & Martin) 2050 Virginia National Bank Bldg, Norfolk, Va. on behalf of Hampton Roads Shipping Association.

* * * *

[52] MR. ROSENSTEIN: Okay. Let's start on page two of the Consolidated Complaint, Notice of Hearing with respect to the enumerated cases. As I understand it, pursuant to Respondent ILA's Answer, paragraph 1 in its entirety has been admitted. With respect to paragraph 2 on page 3, it has been admitted in its entirety. With respect to paragraph 3, it has [53] been admitted. With respect to paragraph 4, it has been admitted. With respect to paragraph 5, it has been admitted. With respect to paragraph 6, it has been admitted except that there are additional rules embodied in the contract and which General Counsel will so introduce into evidence. But the rules as paraphrased in the Complaint in paragraph 6 were taken from the rules on containers. Paragraph 8 is admitted. Paragraph 9 is admitted. Paragraph 10 is denied. Paragraph 11 is admitted. And the remaining paragraphs 12 through 22 were denied.

I believe Mr. Bohannon has called to my attention that I did not mention paragraph 7. That was the rules on containers which were excised from the contract; and, as I have indicated, that the Respondent has admitted that they are the rules, but also there are additional rules which are included in the contract itself.

Now, we could move to the other consolidated complaint 5-CC-792 and CE-49. Paragraph 1 is admitted; paragraph 2 is admitted in its entirety. Paragraph 3 is admitted. Paragraph 4 is admitted. Paragraph 5 is admitted. Paragraph 6 is admitted. Paragraph 7, the same stipulation that those rules are excised but there are additional rules contained in the contract which will be introduced into evidence. Paragraph 8 is admitted. Paragraph 9 is admitted. Paragraph 10 is denied. Paragraph 11 is admitted. Paragraph 12 through 22 is denied. [54] Do you need a repeat of any of those?

JUDGE WAGMAN: No thanks; that's all right.

MR. ROSENSTEIN: Now, I have not had the Answers as filed by Respondent Hampton Roads Shipping Association or Respondent CONASA. I would ask that the same admissions as Respondent ILA made also be made by CONASA, but I would have to defer to Mr. Lambos as to his position.

JUDGE WAGMAN: Mr. Lambos?

MR. LAMBOS: I stated earlier, Mr. Rosenstein and Your Honor, that CONASA would adopt the Answer of the ILA in its entirety.

MR. VANDEVENTER: The same is true for Hampton Roads Shipping, Your Honor.

JUDGE WAGMAN: Are you ready to put on a witness?

* * * *

[65] JACK W. MACE

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[67] Q Now, will you describe for us what a container is, please?

A A container, in terms used in this contract that we have with the International Longshoremen's Association, is a box at least 20-feet long in which cargo is stored for transportation on an ocean carrier.

Q Do they come in specific denominations of length?

A They do; 20's, 30's, 40's, et cetera, various combinations.

Q Now, I want you to specifically refer to the Hampton Roads area and ask you the first date when containers appear.

A A very few containers starting appearing at Hampton Roads in approximately 1965.

Q Now, I want you also to define, if you would, what a LCL load is, an LTL load and a consolidated container load.

A Basically, a consolidated container load would be that which a cargo in a container belongs to more than one consignee. Less than trailer load would be practically the same thing as [68] LCL, likewise.

Q Now, would you define for us what a full shippers load container is?

A A full shippers load would be a container which the contents belong to one single beneficial owner.

Q Now, I want you to refer to 1965 and ask you with respect to a full shippers load whether these containers when they were destined to a point more than 50 miles from the port area, were they stripped at the pier by deepsea ILA labor?

A That would be termed a house to house movement or a pier to house movement, and they were not stripped at the pier unless ordered so by the—ordered to do so.

Q Let's talk about your definition of a house to house movement. What does that mean?

A As an example, General Electric in Portsmouth would stuff a container of its own product for an ultimate destination to somewhere in Germany to the consignee's plant there and the box would not be stripped until it reached its manifested destination in Germany.

* * *

[69] Q Now, directing your attention to September of 1974, are you familiar with containers which were stripped by motor transport carriers within a 50-mile radius of the port area?

A Yes.

Q Is it not a fact that these were containers with full shippers loads?

A Yes.

Q And this would be under your definition of a house to house movement, is that correct?

A Yes.

* * * *

MR. LAMBOS: Yes. I think the record should indicate that Exhibit 2 is the Hampton Roads agreement for the period of October 1, 1968 to September 30, 1971; that Exhibit 3 is the Hampton Roads agreement between November 14, 1971 and [70] September 30, 1974; and Exhibit 4 is the Hampton Roads and Longshoremen's agreement for the period of October 1, 1974 to September 30, 1977.

MR. ROSENSTEIN: Let the record so reflect, as Mr. Lambos has stated.

JUDGE WAGMAN: There's no question about the authenticity of the contracts? I have a proffer of a sitpulation.

MR. LAMBOS: We would stipulate that these were the Hampton Roads Associations with the various ILA craft unions noted on the cover. With respect to the two contracts which are Exhibits 3 and 4 dealing with the collective bargaining portion relating to containers, we will stipulate that this is the agreement between CONASA and the ILA and is contained for convenience purposes within the booklet set forth in Exhibits 3 and 4.

MR. ROSENSTEIN: I'll stipulate to that.

JUDGE WAGMAN: Mr. Vandeventer, do you join in that stipulation?

MR. VANDEVENTER: Yes, we will join in that stipulation.

MR. GLEASON: Yes, we join.

JUDGE WAGMAN: And also Mr. Kelsey. Does everybody join in the stipulations? The Charging Parties?

MR. AUTEN: Yes.

MR. BOHANNON: Yes, sir.

JUDGE WAGMAN: The stipulation is received and General * * *

* * * *

[76] Q Well, can you give me any indication as to the exact point of time that the Tidewater Motor Truck Association was aware of the enforcement of the rules with respect to full shippers loads?

A I would say that members of the Association had knowledge certainly as far back as 1969.

Q Okay. And under what area are you contending that they—or contract provisions are you contending that they had knowledge?

A I would say the entire contract provisions on rules of handling of containers, inasmuch as there were violations going back to 1969.

Q All right. Refer to the contract, General Counsel's Exhibit 2 and turn to page 65. Now, are these the first times that the rules on containers were asserted in a contract that existed in the Hampton Roads area with the ILA?

A That's correct.

* * * *

[77] Q (By Mr. Rosenstein) Mr. Mace, did you testify in the Federal District Court proceeding before Judge Merige on September 17, 1975?

[78] A Yes.

Q And is it not a fact that I asked you whether or not on page 65 there were any provisions which related to the stripping of full shippers loads?

A I don't remember the exact wording of your question. We did talk about full shippers loads, yes. You asked me for definition of one, of such.

Q And is it not a fact that we reviewed the rules on containers and you informed me that there was nothing in the rules which specifically related to full shippers loads?

A I indicated full shippers loads were exempt from stuffing and stripping requirements unless ordered to do so—unless they were ordered to be stripped or stuffed.

* * * *

[81] Q The question reflects, on page 65, is there any provision in number one, two and three which specifically states that ILA has the right to strip full shippers loads at the pier area.

A It states that containers which are destined to a beneficial owner, full shippers loads need not be stripped at the pier area.

Q All right. Now, you talked about full shippers loads being exempt from being stripped at the pier area, is that correct?

A Yes, sir.

[82] Q All right. Now, let's first start out in 1965 when containers first came into the Hampton Roads area. Is it not a fact that containers which were destined to a point beyond a 50-mile radius of the port area were not stripped at the pier by deepsea ILA labor?

A Well, first, the containers that moved through the port in 1965 probably could be counted on your hands. There were a few containers, and there were no set rules in the port at that time. The numbers were just insignificant. Most of them were so-called Conex boxes.

Q But you said that containers did come in in 1965, is that correct?

A There were a few that passed through the port.

Q All right. If they were a full shippers load destined to a beneficial owner more than 50 miles from the port area, is it not a fact that they were not stripped at the pier by deepsea ILA labor?

A Unless they were ordered to be stripped.

Q Okay. Now, let's get into that. When you say, unless they were ordered to be stripped, is it not a fact that this would occur when the container was in transit and the container was changed from a house to house movement to a house to pier movement?

A This could be a true example, yes.

Q So if the container remained a full shippers load, house [83] to house movement, is it not a fact in 1965

that it was not stripped at the pier by deepsea ILA labor?

A That's correct.

* * * *

[90] Q Now, let's go back to review 1965, 1966 and 1967. If you had containers similar to the containers within this case, is it not a fact they would not be stripped at the pier by deepsea ILA labor?

A We did not have any rules on the handling of containers during those years.

Q To your knowledge, if you had those types of containers, is it not a fact that they would not be stripped at the pier by deepsea ILA labor? If you know.

A It would be only an assumption. I don't know.

Q In other words, you're not sure because there wasn't rules on containers.

A That's right.

Q And you don't know from your own personal knowledge?

A That's correct.

Q Okay. Let's go to the 1968 contract, again, if you would. Keeping in mind the definition that you have given as [91] to the types of containers involved in this case, tell me if the rules on containers in 1968 specifically state that the ILA would strip those types of containers which you have just defined to the Court.

A I think the contract is pretty clear stating which containers are to be stuffed and stripped at the pier and which would move on.

Q Is there anything that you see in the rules which specifically gave the right of the ILA to strip full shippers loads destined to a beneficial owner more than 50 miles—excuse me, going to the beneficial owner beyond the 50-mile radius?

A No.

Q Now, turn to General Counsel's Exhibit 3, the 1971 contract. Turn to page 66. Now, is it not a fact that those rules in the 1971 contract are identical to the rules on containers in the 1968 contract?

A That is correct.

Q Once again I ask you, keeping in mind the definition that you have told us with respect to the containers involved in this case, is it not a fact there is nothing in the rules on containers which state that the ILA can ship full shippers loads going to a point more than 50 miles from the port area?

A No, there's nothing in the rules.

* * * *

[92] Q Now, is it not a fact that ILA used Rule 1(a)(3) and 2(b)(2) as the rules which they alleged were the violations against the employer members of the Hampton Roads Shipping Association?

A That is correct.

Q And that was negotiated for the first time in June of 1974 to be inserted in the October 1, 1974, contract?

A Rule 1(a)(3) in the '74 contract is new wording; however, the concept did not change. It says, "for containers going [93] to a point outside of the 50-mile radius not be stripped."

Q Okay. So the concept you're saying is that when a full shippers load comes into the pier that it is not stripped by deepsea ILA labor when it is going to a point more than 50 miles beyond the port area.

A That's correct.

* * * *

[96] Q Now, within those rules, there is a 30-day warehousing clause rule known as 2(b)(4), is that correct?

A That's correct.

Q And that's in the October, 1974, contract?

A That's correct.

Q Would you for the Court describe what that 30-day warehousing clause was?

A Basically, it says on inbound cargo in the normal course of movement of such cargo, it may be warehoused for a period not less than 30 days on which normal warehousing charges are paid; and the container then would be exempt from being stripped at the pier and may be stripped at the warehouse.

MR. ROSENSTEIN: Rule 2(b)(4), Your Honor, in the 1974 contract.

Q (By Mr. Rosenstein) Now, during the period of time of the suspension on the rules on containers with respect to the 30-day warehousing clause, is it not a fact that the containers that would normally go into the warehouse were being stripped at the pier by deepsea ILA labor?

[97] A Well, they were not going to the warehouse. Whether they, in fact, were being stripped at the pier, I don't know; but that operation was suspended.

* * * *

[98] Q All right. Next, you mentioned that, upon order, full shipper loads might be stripped at the pier prior to 1968. If you know, what circumstances would call for that stripping?

A I guess if the cargo changed ownership during ocean transfer or any number of reasons.

Q Would there be any possible reason, other than the fact that all of the cargo in that container was not going to the same place?

A You could say anything is possible, I guess.

Q Well, can you identify another reason that that container would have been stripped?

A I can't think of any particular reason right offhand.

[99] MR. AUTEN: I have no other questions, Your Honor.

JUDGE WAGMAN: Mr. Bohannon?

MR. BOHANNON: Yes, sir, I do have one or two.

Q (By Mr. Bohannon) Mr. Mace, up until the 1974 contract, couldn't it be said that any full shipper load containers coming into Hampton Roads went to their destination without being stripped?

A Yes, sir.

Q All right. Regardless of their destination, if it were a full shipper load, it was not stripped at the piers?

A That's correct.

Q Up until '74?

A Even—

Q Even now?
A Even now, yes. Right.
Q That's my next question. Even now, the bill of lading or the shipping documents showed it to be a full shippers load, it is not stripped at the piers, is it?
A Right.
Q So along that line in the history of containers, have full shipper loads ever been stripped at the piers unless upon direct orders of the owner or someone else?
A I do not know of any cases.
Q Now, you testified in answer to Mr. Rosenstein's questions about a meeting you had with Mr. McNeil that [100] represented the Tidewater Motor Transport Association. Why was there a meeting?
A I did not personally attend the meeting. The Steamship Trade Committee had a meeting, and they discussed the problems that they had with the various motor carriers over the years. A new contract had just been negotiated; and, again, the steamship agents felt like they ought to advise the motor carriers of the terms and conditions of the new contract. So, therefore, an informal meeting of subcommittee level was set up with Mr. McNeil and several of his members. I did not attend the meeting; but that was the purpose of the meeting, to apprise them of this new contract.
Q And that was the first such meeting, was it not? And the only such meeting?
A To my knowledge, yes, a meeting as such, per se.
Q And it could be fairly said that it was occasioned by your new '74 contract?
A Yes.
Q And that did have the container rules completely rewritten?
A I wouldn't say completely rewritten. Similar.
Q Well, the language is different in every paragraph?
A Right.

* * * *

CROSS EXAMINATION

[102] Q This case is about containers that are short-stopped at a trucking station where the cargo is removed

not by the consignee's employees but by the truckers' employees, is that correct?
A That's why the violation was imposed, yes.

* * * *

[106] Q (By Mr. Lambos) Mr. Mace, would you please tell the Court in your own words what the practice was before the Dublin rules with respect to a container destined to go to a warehouse within the port of Hampton Roads?
A If such container did not go to a consignee's facility within a 50-mile radius—a beneficial owner's facility within a 50-mile radius, then, it was termed a stripper. It had to be stripped.
[107] But if the container was destined to go to the beneficial owner's facility within a 50-mile radius, then, it was not a stripper. It did not have to be stripped.
But if the container were to go to a consolidator or a broker or a forwarder's facility or what-have-you, then, the container had to be stripped at the pier by ILA labor.

* * * *

[115] Q (By Mr. Lambos) Mr. Mace, the Hampton Roads Shipping Association is one of the constituent members of CONASA, is it not?
A That is correct.

* * * *

REDIRECT EXAMINATION

[122] Q (By Mr. Rosenstein) Mr. Mace, with respect to a full shippers load, is it not a fact that by the fact that ILA does not strip those containers at the pier, that they receive a royalty for those containers?
A That is correct.
Q All right. Now, what was the reason for inserting that royalty and why does ILA get that royalty?
A The royalty was because it was negotiated in the contract because containerization was a form of automation and, thereby, reducing the amount of hours in which, say, a ton of cargo would be handled via containerization as opposed to break bulk handling.

Q Now, would ILA on a 20-foot full shippers load going to a beneficial owner at its manifested destination obtain a royalty?

A They would.

Q And would that be so much per ton?

A That is correct.

Q And would it be between 40 and 50 dollars possibly per container?

A It's conceivable.

* * * *

[133] Q That's my point. If they were stripped within the 50-mile radius, they would have been charged under Rule 1(a)(3) and 2(b)(2). If they were stripped outside the 50-mile radius, they would have been charged under the evasion principles, is that correct?

A Yes.

* * * *

[137] Q But now, I'm talking specifically about a full shippers load which is going to a single consignee and the union charges that there is false documentation. Now, which document did they say was false?

A Well, if the argument was presented in defense of the container being stripped, that it was stripped at a proper geographic point; and that geographic point was different than its manifested destination.

Q All right. But if it was stripped in Richmond, that was not a proper geographic point, was it?

A If it wasn't in agreement with the manifest and delivery order.

Q In fact, the ILA's contention wasn't that it was stripped at an improper geographic point but that it was stripped by the wrong people?

A It thereby wouldn't be a true house to house movement, if it wasn't stripped by the proper people, yes. It was stripped at a place, as the contract states, a freight [138] forwarder, or a consolidator or a warehouse or broker. These particular points or these particular operations are not acceptable points where containers may be stuffed or stripped.

Q All right. In any case where a violation was alleged, would the shipping companies necessarily have

known that the motor carrier intended to pull the container to his terminal in Baltimore or within the 50-mile area and strip it?

A I'd say that in 99 percent of the cases the ocean carrier would have no knowledge of this. Once that container leaves the terminal, he really doesn't have any knowledge of any—

Q All right. In 99 percent of those cases, how can it be that the shipping company falsified any document?

A It's not always the case. I haven't seen these documents, but I don't think it's always the case that the shipping company or ocean carrier, that is, would be falsifying any documents.

It's a relationship of where the container is stripped and where the documents state that the container should be stripped.

* * * *

[140] All I want to know is what was the practice with respect to containerized freight and the stripping of those containers where the cargo was supposed to go beyond the 50-mile radius; and I want to know what paragraph 2 on page 65 and its apparent successor in this subsequent contract, you know, where did they all start. It's a question of palentology.

MR. LAMBOS: We intend to present some paleontology.

JUDGE WAGMAN: I want to know where did it all come from.

MR. GLEASON: Your Honor, may I ask the witness a couple of questions?

JUDGE WAGMAN: Certainly. Mr. Mace is a patient man.

RECROSS EXAMINATION

Q (By Mr. Gleason) Mr. Mace, I'm a little confused on this shippers load and the 50-mile radius. Now, can you tell me the difference between a shippers load inside the 50-mile radius and inside the 50-mile radius?

A There is none, basically.

Q So the same rules apply to the shippers load, if it's in the 50-mile radius or its outside the 50-mile radius?

A That's correct.

Q And if a container that's destined across the street from the pier and is a shippers load going to the shipper and [141] it goes to a truckman who ships it, is that a violation?

A If it goes to the trucker, yes.

Q Okay. The same thing. Has it been the practice in this port that if a container went outside the 50-mile radius—was destined to go outside the 50-mile radius and went to the trucker, whether it was inside the 50-mile radius or outside the 50-mile radius, was that a violation?

A If it went to the trucker, it was a violation.

Q Regardless of where it went?

A That's correct.

* * * *

[148] MR. BOHANNON: I thought we were approaching this from a different viewpoint, Your Honor. I'm trying to show that the documentation is what controls who strips. Not what happens to it after it leaves the pier.

JUDGE WAGMAN: What's been the practice?

MR. BOHANNON: That's been the practice.

Q (By Mr. Bohannon) Mr. Mace, let me ask you again. If the documentation on a container shows that it is to go to the beneficial owner directly or the bill of lading says this goes to the J.C. Penney Company in Greensboro, North Carolina, it's a full container load. Now, that's a full shippers load. That's what we are talking about here today?

A Right.

Q Such a container has never been stripped by ILA labor, has it?

A Going back to your question, you said, "If this." What are you talking about, the container in tact? "If this goes to."

[149] Q No, I didn't say that, sir.

A If the container in tact goes to—

Q No, let me ask the question again.

A Okay.

Q I'm talking about the documentation. We are not talking about what happens to it after it leaves; we are

talking about as it comes to the pier what the document shows. It shows it's going to J.C. Penney in Charlotte or Greensboro, wherever their warehouse is down there; and that container goes to the truck line that picks it up, invariably, does it not?

A Yes.

* * * *

[152] Q (By Mr. Auten) Mr. Mace, let me ask you one thing. I'm not talking about who is entitled to the work according to the [153] rules. I'm not talking about who should do it. I'm not talking about who may be in violation of the rules. I want to know if anyone other than these motor carriers stripped full container loads destined to a single consignee.

A I'm sure that the ILA from time to time has stripped a full container load.

Q Do you know that as a fact?

A If they were ordered to do so, yes.

Q Now, why would they have done so, sir?

A Well, for any number of reasons. The option of the consignee. Maybe the goods were going to Georgia and he found a local consumer for the goods and he wanted the goods stripped at the pier for local distribution rather than distribution in Georgia.

* * * *

Q (By Mr. Lambos) Mr. Mace, assuming the question just asked of you, assuming that a carrier of the Hampton Roads Shipping Association had a so-called full shippers load destined for Cincinnati and the trucker came up to the pier and told your carrier member that he was going to take it down the street to a trucking station and do it, would not your carrier member instruct the ILA to strip that container?

MR. ROSENSTEIN: Objection; that's hypothetical.

[154] A That's correct.

JUDGE WAGMAN: Overruled.

* * * *

[155] (By Mr. Auten) This, again, Mr. Mace, is addressed to how you folks interpreted the contract which

you had back in 1968. You looked in the booklet—and this is page 65 of the 1968 and 1971 collective bargaining agreement. And you looked in the booklet in the first full paragraph at the top of the page and it says that the rules on containers apply only to containers meeting criteria that are enumerated one, two three right below that, is that correct?

A Yes.

Q All right. The first of those criteria says, "Containers owned or leased by employer signatory members including containers on wheels which contain LTL loads and consolidated full container loads.

A Uh-huh.

Q That paragraph does not apply to any full shippers load, does it, sir?

A No, sir.

Q All right. Number two says, "such containers." What did you take such containers to mean, did you take that to refer back to number one?

[156] A Any such containers.

Q Does it refer back to number one?

A It could.

* * * *

[167] CLETUS E. HOUFF

was called as a witness and, having been first duly sworn, was examined and testified as follows:

JUDGE WAGMAN: Please have a seat, sir, and state your name and spell it, please.

THE WITNESS: C. E. Houff, H-o-u-f-f.

DIRECT EXAMINATION

Q (By Mr. Rosenstein) Mr. Houff, will you state your name and address for the record, please?

A C. E. Houff, Weyers Cave, Virginia.

Q And where are you employed, sir?

A At Houff Transfer, with headquarters in that city.

Q And what is your capacity?

A President.

Q And what is the business of Houff Transfer?

A Motor common carrier.

Q Do you have facilities located throughout the United States?

[168] A In five states.

Q Do you have a facility in Baltimore, Maryland?

A We do.

Q Do you have one in Norfolk, Virginia?

A Yes.

Q Now, are you the individual who is a Charging Party in some of these cases?

A Yes.

Q Now, would you tell me the approximate number of employees that you have at your Baltimore facility and the Norfolk, Virginia, facility?

A At Baltimore, we have 14 employees. At Norfolk, we have five.

Q Are any of the employees at either Baltimore or Norfolk represented by a labor organization for collective bargaining purposes?

A No.

Q Now, how close is your Baltimore faciilty and Norfolk facility to the respective port areas?

A At Baltimore, we are approximately three miles from the Dundalk terminals. In Norfolk, we are three blocks from the Lambert Point dock.

Q And Lambert Point dock is in the Norfolk area?

A That is correct.

Q Now, do you utilize containers in the transportation of [169] goods in interstate commerce?

A Yes.

Q Would you describe how you utilize a container?

A We pick the containers up from the piers, take them to our terminals, weigh them; and, if they are overweight, they are transferred to the trailers of Houff Transfer. In some cases, they may not be overweight and alsc be transferred to the trailers of Houff Transfer.

* * * *

Q What are the size of the containers that you would pick up at the pier?

A 20-foot and 40-foot lengths. Some 35's, but mostly 20- and 40-foot.

Q Now, how is Houff Transfer notified that they are going [170] to pick up a container?

A The broker or agent phones you that it has one container or several containers destined to some consignee; and he then provides you with papers, delivery receipts or dock receipts which you must have in your possession and carry it to the piers, which is authorization for the piers to tender these containers to Houff Transfer.

Q Well, would you describe specifically what a delivery order is, please?

A It's a piece of paper showing where the shipment originated from, who it's destined to, what the shipment consists of, the weight, the container number; and, in some cases, the seal numbers that are attached to the container.

* * * *

[173] Q And will you describe how motor transport carriers like Houff would utilize the bill of lading?

A A bill of lading is issued by the shipper covering whatever shipment he may be shipping at the time, and it is a document by which the shipment is received; and, from this bill of lading, a freight bill is made by Houff Transfer providing essentially the same information that is covered on the bill of lading.

* * * *

Q (By Mr. Rosenstein) Now, I direct your attention to the Baltimore port area, and I ask you when did containerization begin.

A It began, to my knowledge, around 1965.

Q That's in the Baltimore area?

A In the Baltimore area.

Q Now, you have already defined a full shippers load. I want you to tell me in 1965 what Houff Transfer did when they [174] picked up a full shippers load at the pier area in Baltimore.

A We were requested by either an agent of Baltimore or perhaps a consignee itself to go to pier so-and-so and

contact whatever steamship the company may have the container and pick up the same and deliver it—deliver the merchandise to the consignee.

Q Now, what is the distance in miles from the pier area that most of your shipments are destined?

A It would range from a minimum of 150 miles to a maximum of 450 miles.

Q When you picked up a full shippers load at the pier, was the seal in tact?

A In most cases.

Q Had the full shippers loads been stripped by deepsea ILA labor at the pier?

A No.

Q Directing your attention to the Norfolk area, when did containerization commence?

A At about the same time, as I recollect.

Q Will you describe, in the Norfolk area, how you picked up a full shippers load at the pier area?

A In the Norfolk area, the brokers would issue the instructions. In some cases,—and I'm talking about 1965—we would be directed by the consignee to contact whatever broker may be handling the shipment. And once the contact [175] was made, you may have had a document to carry to the pier or it may have been done by a telephone conversation, to go to the pier and get container so-and-so; and there the documents would be issued to you at the pier.

Q Now, when you picked up a container of a full shippers load at the pier in Norfolk, was the seal in tact?

A In the majority of the cases.

Q All right. Would you describe for me when the seal would not be in tact?

A Occasionally, the seal may be broken by customs; and, on some occasions, it may have gotten broken in transit. It is a policy to check the seal numbers before the containers were picked up.

Q Were containers of full shippers loads in 1965 stripped at the pier by deepsea ILA labor?

A No.

Q Now, let's go to the year 1966 for both Baltimore and Norfolk. Was the procedure the same as you described for 1965?

A Yes.

Q Were the containers stripped at the pier by deepsea ILA labor?

A No.

Q And you're talking about full shippers loads?

A Correct.

Q In 1967, in Baltimore and Norfolk, were the containers [176] stripped at the pier—full shipper load containers by deepsea ILA labor?

A No.

Q In 1968, for both Baltimore and Norfolk, were the containers stripped at the pier—full shippers loads—by deepsea ILA labor?

A No.

Q In 1969, the same question.

A No.

Q In 1970?

A No.

Q In 1971?

A No.

Q 1972?

A No.

Q 1973?

A No.

Q 1974?

A No.

Q 1975?

A No.

Q Is there any method in which a consignee—and that's the beneficial owner—can require a container to go through in tact to the final destination?

A Yes.

[177] Q How?

A By requesting exclusive use of the equipment.

Q What is exclusive use of equipment?

A It means equipment will move through with whatever merchandise that may be on it without anything

being added on to it and it must be expedited. In other words, once you receive it, it must keep moving.

Q From 1965 to the present date, has Houff Transfer ever had exclusive use of equipment requested?

A Certainly not over two or three times, if ever. I recall one shipment that may have been a container. I'm not real sure; but it's very rare that that situation, because there is a penalty assessed to the consignee and higher transportation costs.

Q Directing your attention to February 19, 1974, I ask you whether or not you picked up some containers on that date.

A Yes.

Q Where did you pick them up and what containers did you pick up?

A I picked them up from the Dundalk Marine Terminals from United States Lines destined to—

Q How many containers?

A Two.

Q Did you pick up other containers?

A I'm not sure, on that particular date.

[178] Q Did you pick up any containers from Lavino Shipping?

A Yes.

Q Was that in that same general time frame?

A Yes.

Q What type of containers were these three containers which you picked up at the pier area?

A 20-foot containers.

Q And what kind of loads did they contain?

A Two containers from United States Lines contained silicone with the total weight of 78,000 pounds on the two containers. The container from Lavino was drums of picoline with the weight of about 38,000 pounds, 80 drums.

Q Were these containers described as full shippers loads?

A Yes.

Q All right. What did you do from the point that the broker told you that you were going to pick up these containers, that you had been designated as the carrier?

A Picked the containers up from the steamship companies, took them to the Baltimore terminal, transferred them to Houff trailers.

Q What specific reasons did you use to open the seal and strip those containers?

A The number one reason was they were overweight; they couldn't be legally pulled over the highways of Virginia and West Virginia.

* * * *

[179] Q Now, do you want to explain those weight laws in relationship to the container that you picked up at the Baltimore pier area and stripped at your terminal?

A The containers which we picked up in Baltimore were all three 20-foot containers; and they show the distance between the first and rear axle and the maximum weight allowed under those allocations.

Q So what determination did you make with respect to that chart on the three containers which you picked up?

A That they were all overweight.

Q And, therefore, what did you do?

A We unloaded them and transferred them to Houff trailers.

Q And is this to comply with the State of Virginia's rules and regulations on motor transport?

A Yes.

* * * *

[182] Q (By Mr. Rosentein) Now, you said the first reason was as a result of the distribution of load for stripping a container. Would you continue and tell me if there were any other reasons that you determined it necessary to strip the three containers?

A The second reason was that, being a 20-foot trailer or 20-foot container loaded to the roof, going through the mountains of West Virginia, it's a very unsafe operation, particularly in the wintertime. U.S. Highway 60, which is the highway that Alloy is located on, is one of the most obsolete and mountainous roads in the Continental United States.

The third reason is that when we unloaded the container and we turned it back to the steamship lines, we saved the rental cost on the container.

[183] Q Now, the rental cost, is that under your equipment interchange agreement which was introduced as General Counsel's Exhibit 15?

A It is.

Q And do you pay the steamship line for the use of those containers?

A Yes.

Q Those containers are owned by whom?

A They pay the steamship lines for them. Some of them own them and some of them lease them from the container people.

Q Houff does not own the container that you pick up at the pier?

A Under no conditions.

* * * *

[184] Q (By Mr. Rosenstein) Mr. Houff, without going through the documentation, would you relate what actions took place as a result of your stripping full shippers loads at your facility in Baltimore, Maryland?

[185] A The steamship companies presented us with bills totaling $3,000.00, claiming fines of some sort that they had encountered and asked that Houff Transfer reimburse them in these amounts; and, since Houff Transfer chose not to reimburse them, then, the steamship lines cancelled the interchange agreement.

Q Okay. Did the steamship companies tell you the reasons that they were fined?

A It said because we had unloaded the containers. Houff Transfer unloaded the containers at our terminals and put it on Houff equipment.

Q Now, will you describe once again the consequences of your equipment interchange agreement being cancelled with Lavino Shipping and U. S. Lines?

A Once the equipment interchange was cancelled, then, the steamship lines refused to give you any more containers, because they said they didn't have an effective interchange agreement.

Q Since the date of the cancellation of the U. S. Lines equipment interchange agreement, had Houff been selected as the motor transport carrier for full shippers load?

A Many times.

MR. LAMBOS: I didn't hear the last question and answer.

Judge Wagman: Do you want to read that back, Mr. Reporter?

MR. ROSENSTEIN: The answer was: "Many times."

[186] MR. VANDEVENTER: What was the question?

MR. ROSENSTEIN: The question was: After the cancellation of the equipment interchange agreement by Houff and Lavino, had Houff been selected as the motor transport carrier to pick up full shippers loads?

Q (By Mr. Rosenstein) Now, who would select you for the picking up of these containers of full shippers loads?

A The consignees and the brokers, in some instances.

Q Now, has this occurred in the year 1975?

A Yes.

Q And I show you General Counsel's Exhibit 25, and I ask you to examine that briefly.

A This is a letter by the consignee requesting the use of Houff Transfer on two United States Lines containers covering baler twine to move from Norfolk, Virginia, to Staunton, Virginia. Also, attached is a letter from the United States Lines to the consignee saying that Houff Transfer had not signed an interchange agreement with our company and we could not release our equipment to Houff.

Q And the date of that was January, 1975, is that correct?

A That's correct.

Q Now, let's go back, Mr. Houff, to the point that you pick up the full shippers load at the pier area. I show you General Counsel's Exhibit 16, the uniform straight bill of lading. And I ask you whether there is

anything in that [187] document that precludes you from stripping a container at your facility.

A None whatsoever.

Q I show you what has been marked as General Counsel's Exhibit 18, the delivery order. And I ask you whether or not there is any provision which preclude you from stripping the container at your facility.

A None whatsoever.

Q The delivery order covers what, specifically?

A It covers two United States Lines containers with calcium silicium moving from the Dundalk Marine Terminals to Union Carbide at Alloy, West Virginia.

Q Is there anything on that delivery order by the consignee precluding you from stripping those containers?

A No.

Q Was there any indication by the broker on that delivery order precluding you from stripping the containers at your facility?

A No.

Q Is there anything on that order by the shipping lines which precludes you to strip that container at your facility?

A No.

Q On the three containers that you picked up, two from the U. S. Lines and one from Lavino, was there an exclusive use of equipment requested?

[188] A No.

Q I show you what has been marked as General Counsel's Exhibit 15, the equipment interchange agreement. I ask you if there is anything in the equipment interchange agreement between Houff and U. S. Lines that precludes you from stripping a full shippers load at your facility?

A No.

Q Mr. Houff, are there any other documents which you utilize to pick up a full shippers load at the pier area?

A No.

Q So the bill of lading and the equipment interchange agreement and the delivery order are the documents that you utilize?

A That's correct.

Q Is there any other document that you have knowledge of that specifically precludes you to strip full shippers loads at your facility?

A Not to my knowledge.

MR. ROSENSTEIN: I have nothing further of this witness.

MR. AUTEN: Your Honor, I have one question.

JUDGE WAGMAN: Go ahead.

FURTHER DIRECT EXAMINATION

Q (By Mr. Auten) Mr. Houff, in your testimony, you went into reasons why you might strip containers containing full shippers loads going to a single consignee. As I recall, [189] three of them, the weight rules imposed by the states was the first; the second was safety reasons in addition to the weight rules; and the third was the economy, specifically having to do with the rental charge, which was charged by the shipping company.

Now, in addition to those reasons, are there any other operational factors that might suggest to you that a container be stripped?

A Yes. On some containers, the fifth wheel pin located on the chassis will not prevent or will not permit the use of a tandem axle tractor in the movement of that container. In other words, the rear wheels will hit the chassis and, therefore, you are not able to use a tandem axle tractor. If you did move the 20-foot container, there's always the problem of trying the load the thing back, because you only have half the amount of floor space in that that you would have in regular—or less than half the floor space that you would have in regular common carrier equipment, or the equipment of Houff Transfer.

If you are not able to load it back and it has to sit around for days or weeks, it's costing money. Again, it comes back to the cost of the—

Q Just for purposes of clarity, describe what you mean by loading back.

A In other words, if it would be pulled to the consignee's [190] destination—and we will use Alloy, West Virginia as an example—and then get that equipment

loaded back into the Baltimore area, it's practically impossible to get a pay load on it. In other words, even if you did load it, it would move for about half of the revenue that should have been on it; and if you only move it for about half of the revenue, then, it's a losing proposition.

MR. AUTEN: Thank you, sir.

JUDGE WAGMAN: Mr. Bohannon?

MR. BOHANNON: No.

JUDGE WAGMAN: Mr. Lambos?

CROSS EXAMINATION

Q (By Mr. Lambos) Mr. Houff, you have been in business in Baltimore since 1946, haven't you?

A Yes, sir.

Q And you have been in business in the Port of Hampton Roads since 1952?

A I would say that's correct.

* * * *

[198] Q Now, who made the decision on February 19, 1975, that the containers were overweight?

A Our central dispatch in Weyers Cave.

Q Where is central dispatch?

A In Weyers Cave, Virginia.

Q And when was that decision made?

A As soon as the trailers were waiting.

Q You mean the weight of the containers wasn't known until the containers were actually picked up and weighed in your facility?

A That's correct.

* * * *

[210] A For the last year, our business has been way off. U.S. Lines cut off and they were the biggest shippers of containers in the territory which we serve. Lavino would not ship any more by way of Houff.

And I'd say we moved well over a hundred.

Q A hundred containers?

A Right.

Q Since last year was somewhat abnormal, take the year before that. How many would you have moved the year before that?

A Several hundred.

Q Now, when you say several hundred, you are talking about steamship company containers?

A Right.

JUDGE WAGMAN: The year is what, 1974? Or are we talking about a year back from today and this next year, or is it two years back from today?

THE WITNESS: I'm talking about a year beyond the time when U.S. Lines and Lavino cut us off.

JUDGE WAGMAN: When was that, January?

MR. LAMBOS: That was February of 1974.

MR. AUTEN: For purposes of clarity on the record, I think it was midsummer 1974 when those documents show that the interchange agreements were cancelled.

* * * *

[212] Q (By Mr. Lambos) What other work do you handle at the Norfolk and Hampton Roads terminals?

A Outside of the container business?

Q Outside of steamship company container business.

A Well, we handle for about a half a dozen. GSA, I would assume, is our biggest shipper. We handle for Texaco, Southern States, Chase Bank, several others.

Q Now, these are movements in the domestic traffic as compared with the foreign commerce of the steamship company containers, is that not correct?

A Yes.

Q Is most of your business, in fact, not domestic business?

A No, we have more domestic business than we do container business.

Q Substantially more, in fact?

[213] A I wouldn't say it was substantial; but we have more domestic than we do container.

Q In Norfolk, you indicated that you have five employees.

A Right.

Q Could you tell us how many of those employees are supervisory and how many actually perform loading or unloading of container work?

A One supervisor has to do the loading and unloading.

Q Do any of these remaining four employees perform office work?

A One may do a little on occasion; but his primary function is to load and unload. In addition to that, we fill in with over-the-road men, helping them to do loading and unloading.

Q How many manhours does it take to load a container? In other words, take the cargo out of the 20-foot steamship box and put it into one of your own boxes.

A From a half to an hour.

Q From a half an hour to an hour?

A Right.

Q With how many individuals working?

A One.

Q One individual?

A Right.

Q Would that one individual be operating a machine of some type?

[214] A A forklift.

Q He would be operating a forklift. This one individual would take a half an hour to an hour?

A Oh, it's been done in that length of time.

Q And you would say that the two U. S. Line containers required about one hour of labor to move the 78,000 pounds from the two containers into your equipment?

A That's correct.

* * * *

[218] Q (By Mr. Kelsey) Mr. Houff, would you tell us, please, whether in 1965 Houff Transfer Company stripped any containers at any piers in Norfolk or Hampton Roads? On the piers.

A No, we did not strip any on the piers.

Q In 1966, did Houff Transfer strip any containers on the piers anywhere in Hampton Roads?

A Houff Transfer did not strip any containers on the piers.

Q At any time, from 1965 through the present date, is that correct?

A That's correct.

* * * *

[222] Q (By Mr. Gleason) When did you first handle containers for U. S. Lines?

A Oh, I would assume sometime prior to signing this agreement.

Q When was the first time you signed the agreement with U. S. Lines?

A March 18, 1970.

Q So that was the first time you started actually handling containers for U. S. Lines?

A In most cases, we handle some containers before we have an interchange agreement; and the interchange agreement follows the handling of some of the containers.

Q Now, with reference to your terminal operation in Norfolk and Baltimore, did the ILA ever approach you about [223] organizing your employees?

A No.

Q Did the ILA, to you knowledge, speak to you about your interchange agreement and pressuring U. S. Lines to cancel it?

A No.

* * * *

MYLES EVERETT BILLUPS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

[224] DIRECT EXAMINATION

* * * *

A Yes, I am.

Q And, at that time, were you president of the Hampton Roads District Council, which you still are today?

[225] A I still am, yes.

Q And you succeeded on the death of Mr. Alston to International Vice President?

A That's correct.

Q Will you refer back to page 64, of the 1968 agreement?

A Okay.

Q Now, number one, under containerization, it speaks, does it not, only with respect to containers containing LTL loads or consolidated full container loads?

A It goes a bit further. It says, "which are destined for or come from any person, including a consolidator, who stuffed containers of outbound cargo, or a distributor, who strips containers of inbound cargo, and including a forwarder."

Q And that includes containers containing LTL loads or consolidated full container loads, is that correct?

A That what I just read does.

Q Now, that contained in number one in parentheses is the same identical language which is contained on page 65 in (a) (2), is that correct?

A A container which comes from—(a) (2)—

Q You don't have to read it. Just compare what's on page 64 in parentheses with the (a) (2) on page 65.

A Yes.

Q And, therefore, the rules on page 64 and on page 65(a) (2) apply to LTL and consolidated full container loads, is [226] that correct?

A In the context just outlined.

Q That is correct. Now, if you will turn to page 68—Excuse me. Page 66 of the agreement. If you will look under (c) (1), it refers to (a) (3), which is the 50-mile radius clause, is that correct?

A That's correct.

Q And it talks as to LTL movements only, is that correct?

A Speaking to LTL, container loads, yes.

Q Now, if you will refer to page 68, paragraph 8, it states that if the purpose of protecting and preserving the present work jurisdiction of longshoremen and all their deepsea ILA crafts over any containers loaded with LTL cargo or consolidated full container loads as defined herein. So paragraph 8 talks about—

A It stops, but I don't see a period behind herein. It says, "herein is not accomplished by the provisions of these rules on containers, then, either party shall have the right to renegotiate these provisions or any part thereof by giving notice to the other party."

Q It speaks, however, does it not, with respect to LTL cargo and consolidated full container loads, is that correct?

A That's correct.

Q In the 1968 agreement, there is nothing specifically which deals with full shippers loads in the rules on [227] containers, is there?

A Well, the references to the ones that you made back in 2(a), 2(b), the full container load, they were giving the exceptions here to the rules.

Q Mr. Billups, you—

A At that time, in 1968, full shippers loads going to a beneficial owner's own place within or without the 50-mile radius was not stripped by ILA labor.

Q They were exempt, correct?

A At that time, yes.

Q Okay. So deepsea ILA labor in 1968 did not strip a full shippers load at the pier area when it was going to a point either within 50 or beyond the 50-mile radius of the pier area?

A To a beneficial owner or qualified shipper, at his own installation.

Q Now, by contrast, didn't you arrange for a royalty payment as a result of not stripping full shippers loads at the pier area which you would receive on each container?

A On each container that was permitted to move on a house to house move, yes.

Q And that would be approximately forty to fifty dollars per container that would go into a special fund for Longshoremen?

A Not necessarily so. It depends on the tonnage. It was [228] $1.00 per ton for a container at that time that was off loaded off of a full container ship, it was a dollar per ton; it was less on a partial container ship.

Q All right. Now, if you will refer to General Counsel's Exhibit 3 and turn to page 66.

A Okay.

Q Now, in comparing Rule 1 in the '71 contract on page 66, is it not the same as the 1968 contract which you have just testified about?

A It appears to be.

Q And it talks about LTL and consolidated full container loads, is that right?

A Yes, it does.

Q Now, will you turn to the 1974 agreement, page 68; and is it not a fact that the rules on containers were changed as inserted in the 1974 contract?

A Yes, there were alterations made.

Q And is it not a fact on the containers as you heard Mr. Houff testify, that he would have been charged with a stripping violation under Rule 1(a)(3) and 2(b)(2) of your agreement?

A Say that again.

Q 1(a)(3) and 2(b)(2) would have been the sections in the '74-'77 contract which you would have charged Mr. Houff with violating—excuse me—you would have charged the U.S. Lines [229] as a result of the stripping violation?

A Yes.

* * * *

CROSS EXAMINATION

Q (By Mr. Kelsey) Mr. Billups, I would like to go into your background and how the phases of the clauses of the contract which you have ben asked about evolved into the contracts which are now exhibits in the Court.

First, when did you first go to work on the piers at Hampton Roads, how many years ago was it?

A 32 years ago.

Q 32 years ago. Have you done practically every type of job as a Longshoreman worker in the ports of Hampton Roads in the loading and unloading of ships?

A Everything but operate a container crane.

Q All right. Now, when did you first start serving on the negotiating team of the ILA which negotiated the local contracts and local, as it now turns out, container

rules [230] with the employers, when did you first start forming a negotiation team?

A In 1954.

Q And have you served in every negotiation since 1954 to the present time?

A Yes, I have.

Q Now, first, I would like to get to what's just been asked you; and I will go into the contract here. You were asked whether or not on full shippers loads the ILA stripped full shippers loads on a house to house status; and I think you stated that the ILA did not.

A Right.

Q Right. Now, when does the container cease to have the house to house status—or a full shippers load cease to have the house to house status under the contract—or when would the ILA be entitled to strip this load?

A When a full shippers load does not go to the beneficial owner or consignee of the cargo at his own installation and is off-loaded by his own employees, then, it loses its identity as a full shippers load.

* * * *

[232] Q (By Mr. Kelsey) Mr. Billups, state to us when the full shippers load loses its status—I think I asked you this. When it is stripped within the 50-mile limit, is that correct?

A A full shippers load loses its identity, whether it is in or out of the 50-mile radius, when it does not go to the beneficial owner's installation and is off-loaded by its own employees.

Q All right. Now, at this point, does the ILA have the right under the contract and under your agreement with the employers there, to do this stripping of this container—that's if you've got it?

A Any other containers, other than the one just outlined by me, must be stripped at the pier.

Q All right. So—

A And, of course, in the '74 contract under the Dublin rules, if a consignee desires his cargo to be stored in a public warehouse under the 30-day warehousing clause,

then, that container is permitted to move to the public warehouse to be stripped.

Q All right. Now, to your knowledge, do you know of any instance in which the ILA has believed that the employer has known in advance that the trucker would strip a load which was supposed to go house to house to the beneficial owner, do you know of any instances?

A We have no way to prove that he knows.

* * * *

REDIRECT EXAMINATION

[233] Q (By Mr. Rosenstein) Mr. Billups, if full shippers load was destined to a point 450 miles from Norfolk and if it is taken to a point 350 miles away and stripped by the trucker, do you consider that a violation of your contract?

A It's a violation of the clause in the contract that exempts the stripping of the container at the pier, because it no longer qualifies as a full shippers load, because it was short-cut prior to its going to its bona fide beneficial [234] owner's installation and off-loaded by his own employees.

Q Doesn't your contract talk in terms of evasion, going to a non-CONASA port beyond the 50-mile radius?

A Well, the contract stipulates that if, for the purpose of evading the 50-mile rule, that it could be extended beyond that point.

Q And you take the position that you could extend it as far as 449 miles, if the manifested destination was 450?

A We consider that the contract deals with a house to house container going and consigned to a consignee or beneficial owner, wherever it is, and we exempt it on those terms. Any deviations from that principle, it becomes a stripper.

Q And your contract you're speaking is between the shipper, such as U.S. Lines, and ILA?

A Yes.

Q You have no contract with the broker, you have no contract with the motor transport carrier?

A No.

* * * *

[235] OTIS LANDIS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Rosenstein) Mr. Landis, would you give your name and address for the record, please?
A 5718 Bartee Street, Norfolk, Virginia.
Q Where are you employed?
A Teamsters Local Union 822.
Q And so you hold a position in that organization?
A Secretary-treasurer.
Q And how long have you held that position?
A Approximately two years.
Q Prior to holding that position, what type of employment were you involved in?
A Truck driver.
Q And for whom did you drive a truck?
A Hemingway Freight Lines, Hennis Freight Lines, Preston Trucking Company; quite a few.
[236] Q Are these truck lines in and around the Norfolk area?
A Yes.
Q And for how many years prior to 1973 did you drive a truck?
A Since 1960 in the Norfolk area.
Q Now, does Local 822 represent employees of the Tidewater Motor Truck Association for collective bargaining purposes?
A Some of them.
Q Could you name some of them—some of the companies that Local 822 represents?
A Hennis, Preston, Associated, Carolina, Hemingway, Hall's, Maisland Transport.
Q And have you represented these employees since 1965 to the present date?
A Since before that.

Q Now, do you know what a full shippers load is?
A I think so.
Q Would you describe what such a load is, please?
A Well, it would be normally a full trailer load shipped from one shipper consigned to one consignee.
Q The consignee is the owner of the goods, is that correct?
A Yes.
Q Now, as a truck driver, have you ever had an occassion to pick up the full shippers load at the Hampton Roads pier?
[237] A Yes.
Q Would you describe what procedures you use and you follow before you pick up the container and then when you pick it up?
A He would get a pickup order from the dispatcher. That's the trucking company's dispatcher. You would go to the pier and you would present your pickup order to someone normally at a checkout station they have there. They would instruct you where the container is located and you would proceed there, hook up to it and take it out, go through the container interchange line where a interchange agreement is written for the specific trailer-container. He would then proceed back to the checkout station to get a pass or any other documents that go along to get you out the gate.
Q Now, when you pick up these containers at the pier, was the seal in tact?
A Yes.
Q Do you know whether or not that full shipper load container had been stripped by deepsea ILA labor?
A I would have no way of knowing that.
Q What did you do after you picked up the container?
A Normally, you would take it back to your terminal —your company's terminal.
Q And are those terminals located within a 50-mile radius from the pier area, most of them?
[238] A The ones we represent are, yes.
Q Now, have you ever observed containers being stripped at motor transport carriers that contained full shippers loads?

A Well, I have observed containers being stripped. As far as whether it was a full load or not, I really couldn't tell you.

Q Do you know or have knowledge whether Teamster employees of the aforementioned companies you have described when the need arises have stripped full shipper load containers?

A Yes.

Q All right. And they would be stripped where?

A If the trucking strips, it is done at his terminal.

Q Now, will you tell me the reasons that a trucker, when the need arises, would strip a full shippers load by Teamster employees?

A Well, there would be numerous reasons. One of them would be—It's primarily 20-footers, which they are a very cumbersome trailer for a freight company to try to operate with. They are small. And I think there was some testimony before about the bridge law as opposed to weight limits. You can take two 20-footers. If both of them would have, say, in excess of 45,000 pounds between the two of them, you can consolidate them into one trailer, one 40-or 45-footer freight trailer and take it where it's going, deliver it. Then, [239] you've got a trailer there and they can reload back.

Q Okay. Are there any other reasons that motor transport carriers would strip a container?

A Well, from my experience as a driver and as a business agent, now, in getting complaints from the drivers about containers, they tell me that they are hard to pull, they handle bad, the tires may not be maintained at what they think are proper standards, they have a lot of light problems with them.

And on the 20-footers, with the twin-screw tractor, the three-axle tractor, you do have the problem of the rear tires getting into the landing gear and the chassis frames.

Q Would you explain that?

A Well, when the tractor turns, the trailer—the landing gear, the stand that it stands on when it's not being pulled, these are right up against the back of the tractor; and when you turn, they dig into the tires.

Q How long have Teamster employees been stripping full shipper loads at the employer members of Tidewater?

A I have seen containers stripped and loaded in and out of Norfolk since they have been running containers.

Q Do you recall the approximate year when that first started?

A Oh, some of them were pulling them in the middle-'60s.

Q Now, is there any way, to your knowledge, that a [240] consignee can require a 20-foot container to go in tact to the manifested destination?

A Where the consignee would require it?

Q Consignee, broker—

A Shipper or whatever?

Q Right.

A The only thing I could come up with right off would be on an exclusive use basis.

Q What's exclusive use mean?

A That's where the shipper or the receiver, one or the other—Whoever is paying the freight.—pays a premium for—he gets exclusive use of the trailer. Exactly what it says.

* * * *

[241] Q Do Teamsters consider the work of stripping a full shipper load at their motor transport carrier facility as their work?

A At the motor carrier terminal?

Q Yes.

A I most certainly do.

* * * *

[246] ARTHUR BAKER

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[254] Q (By Mr. Rosenstein) I show you General Counsel's Exhibit 34 and ask you to turn to page three, with respect to exclusive possession and responsibility. Could you explain what that [255] means, please?

A Well, this is one of the provisions mandated by the Interstate Commerce Commission which indicates that the exclusive possession and responsibility of the equipment rests with the using carrier, that he has exclusive possession control and use of equipment until he completes his responsibility, which is to return the equipment.

Q When you speak of carrier, what do you mean?

A Well, this is a carrier under the definition of—or under the control or jurisdiction of the Interstate Commerce Commission.

Q A motor transport carrier?

A This could be a motor transport carrier. It could possibly be a railroad or any domestic water carrier, if it's under the jurisdiction of the ICC.

* * * *

[256] Q (By Mr. Rosenstein) I show you what has been marked as General Counsel's Exhibit 36 and ask you if you can identify that document.

A Yes, I can. That's the uniform intermodal interchange agreement.

Q All right. What is the uniform intermodal interchange agreement?

A The uniform intermodal interchange agreement is a direct result of a task force composed of motor carrier members, water, steamship carrier members and railroad representatives who got together under the auspices of the Department of Transportation and the Equipment Interchange Association under [257] a business review letter granted by the Department of Justice to allow them to collectively sit down and hammer out a set of interchange agreements that would be applicable between the intermodal carriers; that is, water carriers, railroads and

motor carriers. This was accomplished in 1972, resulting in the UIIA agreement.

Q I show you what has been marked as General Counsel's Exhibit 37 and ask you if you can identify that, please.

A Yes, I can. That is a list of the signatories that are parties to the uniform intermodal interchange agreement.

Q Now, I refer you to page 22 of that document. And I ask you whether or not United States Lines is a signatory to this agreement.

A Yes, they are a signatory.

Q And what was the date that they became a signatory to this agreement?

A They executed the agreement June 28, 1973.

Q '73?

A 1973, right.

Q And I refer you to page 11 of General Counsel's Exhibit 37 and ask you whether Houff Transfer is a party to that agreement.

A Houff Transfer is a party. They signed the agreement March 25, 1974.

Q Now, in General Counsel's Exhibit 36, I direct you to [258] page 5 of that agreement and ask you to look under the section, Use of Equipment. Now, with respect to four point one (a), what is that?

* * * *

[261] Q (By Mr. Rosenstein) Now, what does General Counsel's 36 specifically provide for?

A It provides for the carrier named below owning or operating equipment for intermodal interchange service agrees joint and severally with each and all other carrier subscribers executing a counterpart of the agreement to be bound by the provisions of this agreement and subsequent amendments or [262] revisions thereof governing the interchange and use of, repairs to and settlement for the equipment used in intermodal interchange service when interchanging equipment with other carrier subscribers.

Q Now, is U.S. Lines a subscriber to General Counsel's 36?

A They are; they are a party.

* * * *

VOIR DIRE EXAMINATION

[265] (By Mr. Rosenstein) From your own knowledge, Mr. Baker, is General Counsel's 36 a copy of the agreement that has been signed by the subscribers contained in General Counsel's Exhibit 37?

A It is the exact agreement. We are the issuing agent for the UIIA, Equipment Interchange Association. We forward that agreement to all signatories.

Q I direct your attention to page five and ask you to refer to four point one (a) and tell me what that means.

A Four point one (a) is a standard provision we have used in the motor carrier interchange industry; and this is also the provision that was agreed upon by the water carrier task force members, railroads and the motor carriers. And it reads as follows:

"User shall have the right to complete control and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same [266] condition as received. Ordinary wear and tear accepted."

Q Do you know what a full shippers load is?

A Yes.

Q When a motor carrier picks up a full shippers load at the pier area, would that paragraph refer to the use of equipment?

A In my opinion, it would.

Q Now, does a motor carrier have an agreement to deliver the cargo in that container?

A Yes, he has a bill of lading.

Q I show you what has been marked in evidence as General Counsel's Exhibit 16 and ask you if you can identify that.

A The uniform straight bill of lading.

Q Now, who is that contract between?

A It's between the shipper and the consignee, or receiver.

Q And that document prevails at what point?

A It prevails from when the shipment is picked up until it is delivered.

Q So when the shipment is picked up at the pier area?

A Right.

Q Now, I show you what has been marked as General Counsel's Exhibit 18 and ask you if you can identify that.

A That's a delivery order.

Q Do you know what a delivery order is?

A Yes.

[267] Q And who is that a contract between?

A That's between the carrier and the consignee.

Q When you say carrier, define what you mean by carrier.

A Well, either a motor carrier or a steamship line or railroad.

Q Is there anything on that document which precludes a motor transport carrier from stripping a container?

A No.

* * * *

CROSS EXAMINATION

[276] Q (By Mr. Gleason) We have the same operation with U.S. Lines with a container that they dropped, say, in California and one of your members picks it up to deliver it across country to Norfolk, Virginia. Under this agreement, does that motor carrier have the right to take that cargo out of that container and put it in his own truck for delivery—

A Sure.

Q —to Norfolk.

A What's to prevent him? The bill of lading is from the West Coast to Norfolk, but—

JUDGE WAGMAN: The answer is yes, right?

THE WITNESS: Yes.

Q (By Mr. Gleason) Is there anything in the agreement that specifically says that you have that right?

A There's nothing that says you don't, either.

Q So it's neither way. It doesn't say you can; it doesn't say you can't.

A Right.

Q Now, isn't it a fact that these agreements really are set up for the purpose of finding who is responsible for damages does to the containers in movement and the cost of per diem rates on the containers after the free period, isn't that the main purpose?

A They outline user responsibility and per diem charges.

[277] Q But it has nothing to do with the handling of cargo—

A Basically not.

* * * *

RECROSS EXAMINATION

[289] Q (By Mr. Rosenstein) What is the position of your organization with respect to the right of motor transport carriers to strip full shippers loads once the container leaves the pier area?

A Well, we consider it to be within the purview of the motor carrier, to handle that shipment to his economic satisfaction, or to his economic interest.

If it requires stripping, then, he can strip it.

Q And there are no documents which you are bound by, that being the delivery order, the bill of lading or the equipment interchange agreement, the UIIA, which precludes the motor transport carrier from stripping a full shippers load at his facility?

A None whatsoever.

* * * *

[291] JOHN EVERETT

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

[292] DIRECT EXAMINATION

Q (By Mr. Rosenstein) Mr. Everett, could you state your name and address for the record, please?

A 4244 Greenleaf Drive, Chesapeake, Virginia.

Q And where are you employed, sir?

A Everett Express, Incorporated.

Q And in what capacity do you serve with that company?

A President and general manager.

Q And is your corporation a member of the Tidewater Motor Truck Association?

A Yes, sir.

Q Now, can you tell me when containers first appeared in the Norfolk area?

A I believe it was around 1965. Maybe some before; but I believe it was around '65.

* * * *

[293] Q Tell me how you would be selected to pick up a full container load.

A Well, we would be contacted by a customer who would give us instructions that he would have a load or, if it is containers we are speaking of or whatever, have his broker to contact us and give us the necessary documents for us to pick it up with.

Q All right. Now, what type of documents are you referring to?

A The delivery order.

Q All right. I show you—

A Bill of lading.

Q All right. I show you what has been introduced into evidence as General Counsel's Exhibit 18, and I ask you if you can identify what that is.

A This is a delivery order.

Q Is that the same type of delivery order that Everett Express would use?

A Yes.

Q Now, what does that delivery order provide for specifically?

A The primary purpose of the delivery order is to give the carrier authority to go to the shipper and pick up the [294] freight.

Q So when you say the carrier, are you referring to Everett Express?

A Well, Everett Express, if he is the carrier, yes.

Q And you go down to the pier and what do you do with the delivery order?

A The delivery order, you give it to whoever is in charge of releasing the shipment to you.

Q Would a shipper be, for instance, U. S. Lines?

A It's possible.

Q And you would then deliver that delivery order to the shipper, is that correct?

A Yes, sir.

Q All right. And then, what would happen?

A Well, he would in turn turn the shipment over to us.

Q When he turns the shipment over to you, is the trailer in tact—or is the container in tact?

A If it is a container, yes, sir, it is in tact; and, of course, we have to go through an inspection line and inspect it, check it over whether it's road-worthy or whatever and anything that might be wrong with it, have it corrected right then.

Q And this would be with respect to a full shippers load, is that correct?

A Yes, sir.

[295] Q Now, you mentioned a bill of lading. I show you Exhibit 16—General Counsel's Exhibit 16 and ask you if that's the uniform bill of lading.

A Yes, sir, this is the bill of lading.

Q All right. Now, what contractual relationship is involved in the bill of lading, what parties?

A Well, the bill of lading primarily covers the shipper—between the shipper and the carrier.

Q Okay. Now, when you say shipper and carrier, who do you mean?

A When I say carrier, I'm speaking of a truck line or a railroad or Everett Express if he's the principle or the consignee whoever the shipment is going to or consigned to.

Q Assuming you pick up a full shippers load at the pier area, what do you do with it, then?

A Well, of course, from there it is brought to our terminal and billed and from there it is sent out for delivery.

Q Now, have there been occasions when you have for your own convenience opened up a container?

A Yes, sir.

Q All right. For what reasons would you open up a container?

A Well, it could be several reasons. The carrier has the right to inspect any load, so we might want to inspect it.

Q And why would you do that?

[296] A Well, if we have any doubt at all that there might be something wrong with the shipment, or it might not be properly—It might say that this is a load of coffee and it could have rice in the trailer. Of course, this would determine your rate; the rate is determined or classified on different items. A lot of times and mainly, if we have a trailer or a container, for example, and we have—Well, let's use Wilson, North Carolina, as an example. If this load is going into the area of Wilson, North Carolina, and we had a load down there to come back say on another steamship company container and we had to take this container and empty it and then load it, this is not profitable for us. If we took the loaded one down there and bring it back empty, that's still not profitable. So we would transfer the load maybe from one container to another in order to do good business, in other words.

Q Now, what size normally are the full shipper load containers that you pick up at the pier area?

A Well, the size of the container?

Q Yes.

A We have some 20's and some 40's.

Q What size container would you transfer the contents into?

A Well, primarily the 20's.

Q What size would you transfer it into of your own equipment?

[297] A Well, it could go into a 40-foot trailer or 45 or whatever.

Q Now, have you ever had an occasion to call a consignee who owns the goods?

A Yes, sir, I've done this quite often.

Q Now, why would you call the consignee who owns the goods?

A Well, we believe it's a good policy to ask the customer, even though they are getting the container which is supposed to be a house to house movement, because sometimes a customer may not want it to come through house to house. So we will call him and ask him if he minds if we transfer his load; and we have never had one refuse us, yet?

Q Now, you said that containers started in the Norfolk area in 1965, is that correct?

A I would say roughly about that time, yes.

Q Now, between 1965 and the present date, has Everett Express operated with respect to full shippers loads in any different manner?

A No, sir.

Q So when the need arises you strip that container at your facility?

A Yes, sir.

* * * *

[299] Q (By Mr. Rosenstein) Do you understand the question?

A Yes. You asked, I believe, did this say anything on here at all or shows anything on here at all that I cannot strip a container.

Q That's correct.

A No, sir, it does not.

Q I refer you to the bill of lading, and I ask you whether there is anything in the bill of lading which prohibits you from stripping a full shipper load container at your facility.

A No, sir, it does not.

* * * *

CROSS EXAMINATION

[300] Q (By Mr. Lambos) Mr. Everett, when was the last time you handled a U. S. Lines container?

A This morning.

Q Could you tell us what the terms of that arrangement were?

A What do you mean, you mean—

Q Well, don't you have an agreement with U. S. Lines?

[301] A Oh, yes. I'd go pick up the trailer, check it out and bring it to my terminal and I would take it to my customer.

Q And the normal relationship is for you to pick up a container from U. S. Lines and take it right to the customer?

A Well, yes, if the customer is going to load it out, that's true or is going to off-load it.

Q And you have an agreement, other than that uniform intermodal agreement, which is General Counsel's Exhibit 36 with U. S. Lines, which provides for compensation to U. S. Lines for the use of their container, don't you?

A Yes, sir, we have a contract proposal on the per diem.

* * * *

[304] Q (By Mr. Lambos) Do you consider yourself fully bound by this uniform intermodal interchange agreement?

A Yes, sir.

Q And do you carry out the terms of that agreement with respect to all containers that you receive?

A I try to. I mean, as near as I know how, I mean, what I'm supposed to do.

Q And if you were to go to the pier and see an overweight or overladen container at the U. S. Lines pier, what would you do at that point?

A If it was caught, if my driver knew about it before he left there, I would never leave the terminal with it.

Q You would expect that the ILA at the terminal would unload that container and render it safe, would you not?

A No, sir, I wouldn't expect—I wouldn't care who did it. I would go to U. S. Lines and say, "You will have to take this weight off," and it would be up to them to do what they want to about it.

Q And if U. S. Lines employed ILA employees at that facility, it would be the ILA employees who would take care of it—the U. S. Lines' employees?

A I would say it would be up to U. S. Lines; whatever they choose to do would be up to them.

* * * *

RECROSS EXAMINATION

[307] Q (By Mr. Gleason) Mr. Everett, you had stated some cases where these containers came to your terminal and that you had stripped these shippers loads and put them on your trucks to move them.

A Yes, sir.

Q Did you ever notify the steamship company that you were doing this?

A No, sir.

[311] EDWARD G. BOCHERT

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Rosenstein) Mr. Bochert, would you state you address for the record, please?

A Yes, 5705 Chippewa Road, Virginia Beach, Virginia.

Q And where are you employed, sir?

A Associated Transport, Virginia Beach, Virginia.

Q And in what capacity?

A I'm the manager.

Q And how long have you served in that capacity?

A A little over three years.

Q 1972?

A Yes.

Q Now, would you explain briefly the business of Associated Transport, please?

A Yes, sir, we are Class A common motor carrier of cargo, freight engaged in interstate commerce. And intrastate commerce, also.

Q Now, how many employees do you have at your Virginia [312] Beach facility?

A At this time, approximately 50.

Q Now, are those broken down into various classifications?

A Yes, they are.

Q Would you tell us the types of employees that you have?

A Well, I have approximately 30 what we classify as truck drivers, 11 platform workers and the rest being clerical, supervision and sales.

Q Are you drivers represented for collective bargaining purposes by a labor organization?

A Yes, they are.

Q And that is what, sir?

A The Teamsters.

Q You indicated that you ship in interstate commerce, is that correct?

A Yes.

Q What is the average distance of your moves from the Virginia Beach facility?

A Our average length of haul from Virginia Beach is about 450 miles.

Q Now, could you give us the distances of the Associated terminal at Virginia Beach to the various port areas where you would pick up containers or cargo?

A Yes, we are about seven or eight miles from the maritime terminals in Norfolk, about that same distance from [313] the Lambert's Point docks in Norfolk, maybe seven or eight miles from the Portsmouth Marine Terminals in Portsmouth, Virginia, and about 20 to 25 miles from the piers in Newport News, Virginia.

Q Mr. Bochert, would you describe what a full shippers load is?

A Yes, sir, it's a truckload freight on a trailer consigned to one consignee and one shipper.

Q Now, has Associated ever had occasions to pick up full shipper loads at the Hampton Roads pier area?

A We certainly have.

Q Will you describe the procedures Associated follows in order to pick up a container?

A Yes, sir. We are issued a delivery order or bill of lading from a broker either in the town of Norfolk or from an outside source through the mail. Upon receiving this, we note on the delivery order that we, of course, have been specified by a shipper, consignee, as the carrier to transport the goods from Norfolk to wherever. The de-

livery order also spells out where the container in this case is at and at which pier, as I mentioned before.

We check with the pier offices down at the particular pier, say, for instance at the Maritime Terminal, asking the responsible party down at the pier office, is container such-and-such released for shipment. If we are advised that [314] this has happened, we send the local driver with a local tractor to the pier area with his delivery order. He then, in turn, reports to the particular party involved, at whatever steamship line it may be, shows the document proving that we are the carrier of record. There he is instructed the proximity at the terminal where he can find this container. He then goes looking for the container.

Upon finding the container by number, he is checking the number or for the number, he takes it through the steamship's checkout line that they have, where the trailer is checked for DOT and ICC compliance for lights, tires and what-have-you.

Q Would you explain DOT? What does that mean?

A Department of Transportation which, of course, governs Associated Transport and all the other carriers as to rules and regulations of the highway and all phases of transportation, dangerous cargoes and what-have-you.

Q And the ICC is what?

A The Interstate Commerce Commission.

Q All right. Would you continue, please?

A Yes. Once this is accomplished and the container is checked by eyesight by my driver as well as the person at the pier responsible, U. S. Lines personnel or whatever, it is then placed off to the side. The driver goes in and signs an equipment interchange, where Associated Transport signs for [315] this container and has accepted the responsibility of the container, and this interchange agreement between, say in this case or my case, U. S. Lines with Associated.

He then obtains a pass to exit the premises, the pier or whatever, the terminal area; and he brings the trailer back to my terminal.

Q Now, you mentioned a delivery order. I show you General Counsel's Exhibit 18 and ask you if that is the delivery order.

A Yes, sir, it is.

Q Now, what does the delivery order specifically cover for you to obtain?

A Well, the delivery order would cover the letter, as I refer to it, specifying, like I said, us as the carrier. The consignee's name would appear on this. A lot of times in a lot of cases, who is responsible for the charges that we will be billing for the movement of this particular freight.

Q Could you speak up a little louder, please?

A Yes, sir.

Do you want me to repeat that?

Q No, that's all right. On the delivery order, does that enable you to pick up the cargo itself?

A Yes, it does.

Q Now, I refer you to General Counsel's Exhibit 16 and ask you what that is.

A This is a uniform straight bill of lading.

[316] Q All right. Now, what parties would be subject to the uniform straight bill of lading?

A The shipper, the consignee and the motor carrier.

Q Now, when you are talking about the shipper, who do you mean?

A The party that originates the shipment.

Q That would not be U. S. Lines?

A No, sir.

Q And the motor transport carrier is Associated?

A Right.

Q And the consignee is the beneficial owner of the goods?

A That's right.

Q Now, I show you what has been identified as General Counsel's Exhibit 44, and I ask you if you can identify that document.

A Yes, sir, this is or was the existing contract between United States Lines and Associated Transport.

Q All right. Now, what type of contract?

A An equipment interchange contract.

Q All right. Now, what was the date that that agreement was negotiated?

A May 6, 1969.

Q All right. Now, what does the equipment interchange agreement provide?

A It's a contract between the steamship line and the motor [317] carrier to interchange equipment.

Q Did you have any other agreements with respect to the interchange of equipment with U. S. Lines in existence in March of 1969?

A Not to my knowledge, no.

Q You arrived in 1973, is that correct?

A '72.

Q Do you know of any other agreement that you utilized to exchange equipment with U. S. Lines, other than that document?

A No, sir.

MR. ROSENSTEIN: I move to introduce General Counsel's Exhibit 44.

JUDGE WAGMAN: Any voir dire or objection.

MR. LAMBOS: No, in the meantime, I have had an oportunity to examine the document. I have no voir dire, and I have no objections.

JUDGE WAGMAN: I take it nobody else objects?

General Counsel's Exhibit 44 is received in evidence.

Q (By Mr. Rosenstein) Now, I direct your attention to September 24, 1974, and ask you whether you picked up any containers on that date.

A Yes, sir, I did.

Q All right. Tell me whose containers you picked up and what you did.

[318] A I picked up eight containers either owned or leased to the United States Lines. I picked them all up at the Maritime Terminals in Norfolk, Virginia, all at one time. It was eight containers involved. We dispatched two local drivers to handle the eight containers down to the pier, and they followed the procedure that I outlined before and brought all eight of them back to my terminal at Virginia Beach.

Q What type of containers were these?

A Well, they were a mixture of 20-foot and 40-foot containers.

Q What type of loads did they contan?

A All shipper loads.

Q Now, what did you do with the combination of the 20- and 40-footers when you brought them back to your facility?

A Well, we had the bill of lading; and I determined that, in each instance, these were cartons of velvet, roughly 12,00 pounds to a 20-foot container. And, at this time, I had empty equipment of my own sitting in my yard doing nothing. Well, I made up my mind to say, strip two 20-foot containers and put them in one of my 45-foot trailers. Two more was done the same way, but with a combination of a 40-foot and a 20-foot we put in one of my 45-foot trailers.

Q Where was the manifesed destination for these containers?

A As I recall, five were in North Carolina and three were [319] in Tennessee.

Q And these were all destined to a point more than 50 miles from the port area?

A That's correct.

Q Now, you said that you made a determination based on the bill of lading to strip the containers. What entered into your determination to strip the containers?

A Well, for one, the merchandise was that of such that it would not be easily damaged, it wouldn't be pilfered, and also they were large cartons, bulky cartons, but very light cartons, though.

And, of course, the economics of the whole thing with my own equipment sitting in my yard, why take on leased equipment.

Q Well, is there a charge you would have to pay on the leased equipment?

A Yes, sir, there is.

Q How does that work, and who do you pay the charge to?

A It is per diem charges that we pay to United States Lines for lease of their equipment while in our possession.

Q Do you recall any other reasons that you determined to strip the eight containers in question?

A As I recall, one of them was overloaded. We then, of course, instead of going to the broker saying we have a problem, we have an overloaded container, we would have to take it to [320] the pier and whatever, I just adjusted the load on my own equipment, the difference being the containers are much heavier than our own trailers.

Q Do you ever contact the consignee prior to stripping the containers?

A No, sir.

Q Does the broker require you to contact the consignee?

A No, sir.

Q Is there any restriction in the bill of lading which precludes you from stripping a full shippers load at your facility?

A No, there is not.

Q Is there any restriction in the delivery order which precludes you from stripping a shippers load at your facility?

A No, sir.

Q Referring to your equipment interchange agreement that was in existence in September of '74, was there any restriction that precluded you from stripping full shippers loads at your facility contained in that document?

A No, sir.

Q Now, is there any way in which a consignee could require that the 20-foot container remain in tact and be delivered as a 20-foot container?

A Yes, there is.

Q And what is that?

[321] A That's by requesting exclusive use of the vehicle.

Q Now, what does that mean?

A Well, that means that the said container will move in tact as it arrived this country to the destination.

Q Was exclusive use of equipment requested on the eight containers that were picked up from U.S. Lines on September 24, 1974?

A No, sir, there was not.

* * * *

All right. I have been tendered this container. I know that I am only getting $400.00 revenue out of it; but, physically and economically, if I decide to strip this container, I'm spending the labor to do it, why make a [322] shipper or a consignee do that? They are good enough to give me the freight, so why should I say I want the trailer stripped at the pier and cause friction or whatever. There's too many carriers around me. We don't need Associated, if they want to run down to the pier and have their containers stripped all the time. So I eat these additional costs. However, when I do strip we make up for it in line haul, diesel fuel and many other aspects.

* * * *

[326] Q Did there come a time when you received correspondence with respect to your equipment interchange agreement?

A Yes, there was.

Q I show you General Counsel's Exhibit 42 and 43 and ask you if that is that correspondence.

A Yes, sir.

Q What happened with respect to your equipment interchange agreement?

A It was cancelled because of the Associated Transport not reimbursing U.S. Lines $8,000.00.

Q So U.S. Lines had paid the $8,000.00 fine to the joint fund, is that correct?

A Uh-huh.

* * * *

[327] Q Now, after the cancellation of your interchange agreement on March 20, 1975, did U.S. Lines ever interfere with your ability to pick up full shipper loads?

A Yes, they did. We received a call—at least Mr. Bryant, the assistant terminal manager at Associated Press did—from a gentleman named Mr. Quigley work-

ing with J.P. Stevens in New York. Mr. Quigley informed Mr. Bryant of a booking number for us to pick up two U.S. Lines empty containers to transport to somewhere in North Carolina to pick up loads for export to come back over the Norfolk port.

Mr. Bryant hung up from Mr. Quigley and called up U.S. Lines and said, "I've got this booking number. When can I pick these two empty containers up?" And I believe the gentleman's name was Edwards. I'm not sure. But Mr. Edwards [328] told Mr. Bryant, he said, "I will have to check with the New York office and call you back." And about 45 minutes elapsed and this phone call did come in, and Mr. Bryant was informed we couldn't handle the containers if we didn't have a contract with U.S. Lines any more. This was Mr. Quigley.

* * * *

Q Now, from the cancellation of your interchange agreement on March 20, 1975, have you been able to pick up containers of full shippers loads at the pier in the Norfolk area?

A You're speaking of other containers?

Q No, of U.S. Lines containers.

[329] A No, sir.

* * * *

Q (By Mr. Rosenstein) Mr. Bochert, you testified that you commenced operations as manager in 1972. Starting in 1972, did you follow the same procedures with picking up full shippers loads as you have described in your testimony?

A Yes, sir.

Q In 1973, did you do it the same way?

A Yes, sir.

Q And in 1974, did you do it the same way?

A I did.

Q And in 1975 with other shipping lines besides U.S. Lines, would you also follow that practice?

A Yes, sir.

* * * *

CROSS EXAMINATION

[343] Let me put it this way: When was the first time that you learned that the ILA took the position that if a shippers load destined for a consignee's place of business were short-stopped at a trucker's terminal and there the container was stripped into a motor carrier's equipment, that the ILA considered that this was a violation of the steamship carrier's obligations to the ILA under their contract, when did you first learn of that fact?

A That exact fact would be at the first—at the injunction hearing, I think. That exact fact.

Q That exact fact.

A Yes.

Q Now, let's take the general knowledge on this subject, when did you first have it?

A I have heard of the 50-mile radius, if that's what you are speaking of. I've known about that for ten or eleven years, that they had a 50-mile clause or something of this nature. I don't know.

Q And ten or eleven years would take us back to the middle or mid-'60s?

A Right.

Q And the 50-mile clause—or so-called—has been well-known in the trucking industry since the mid-'60s, hasn't it?

A It has, I guess, yes; uh-huh.

* * * *

REDIRECT EXAMINATION

[368] Q (By Mr. Rosenstein) I show you Respondents' 3, Mr. Everett, and ask you to refer to 4, subparagraph (e), and I ask you what does that mean.

A Could I have a moment to read it?

Q Please.

A This means that the carrier or the principle, if you want to use Everett Express for the moment, if we abide by this, between United States Lines and Everett Express has full control over these containers when they checked them out from their facilities; they also have full control over any persons or anyone have to do with them.

And if I may, I would like to read it. Maybe it would be more understandable if I could read it.

* * * *

[371] Q Have you operated in your business insofar and having particular reference to the stripping of containers?

And I'm also talking about the period of time from 1965 to the present, substantially in a similar manner with regard to the containers with each of these companies?

A Yes, sir.

Q And does that involve, on your part, the stripping of the containers whenever it appears to be in your company's best economic advantage?

A That is the only reason for stripping one.

* * * *

[375] Q (By Mr. Auten) Mr. Everett, right up to and including the date of this hearing, has anybody with U.S. Lines or with any other shipping company ever said to you that they thought their interchange agreement with you compelled you not to strip any container?

A No, sir.

Q They have never said that any interchange agreement forbade you from stripping a container?

A No, sir.

* * * *

[378] Q And isn't the purpose of that interchange agreement to find out whether damage is done to the equipment and who is responsible for the damage to the equipment?

A Well, that's partly, yes.

Q But isn't that the main thing? If there is no cargo in the container—

A No, sir; no, sir. There's some part of it is to give you the possession of it.

Q Possession of the container?

A Certainly.

Q But not of the cargo?

A No, sir. No one has control of the cargo but the carrier that has it in his possession.

Q Well, isn't it a fact that the delivery order and the bill of lading is actually what controls the cargo?

A Yes, sir. And the bill of lading, if I may add, never comes from U.S. Lines. It comes from the customer.

Q All right. Thank you.

* * * *

[379] ROBERT W. McCLESKEY

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[380] A A full shippers load would be a load loaded by one shipper going to one consignee that would fill a trailer either cube-wise or weight-wise.

Q Has Carolina Freight ever had an occasion to pick up a full shippers load at the Hampton Roads pier area?

A Yes, sir.

Q Would you describe how you go about picking up a full shippers load?

A Well, we receive a bill of lading, delivery order usually from a broker in most cases and give the delivery order to a driver who takes it to the pier. You see the proper people in the office down there. They tell you where the container is and the driver goes and finds it and hooks up to it. He will make a preliminary check, pull it through the interchange line. If everything is okay, leave the interchange line, receive a pass on it, and pull it out the gate.

Q When you pick up the full shippers load at the pier, is that container in tact?

A Yes.

Q Has that container, to your knowledge, been stripped at the pier by deepsea ILA labor?

A Not to my knowledge.

[381] Q I show you what has been marked as General Counsel's Exhibit 18 and ask you if that is a delivery order.

A Yes.

Q And is that what you spoke of that a broker gets to you which enables you to proceed to the pier?

A Normally, the broker does give it to us, yes, sir.

Q Now, what does the delivery order provide for specifically, what does it cover?

A Well, it normally tells you, in the case of containers, what the container number is, where it's going; and it gives the people at the pier the knowledge that you have the authority to haul this container down the road.

Q Does it cover the cargo in the container that is owned by the beneficial owner?

A Normally, it mentions the cargo, yes.

Q Now, when you get that delivery order, do you call the beneficial owner-consignee?

A Not normally, no, sir.

Q So do you then pull it from the pier area some place after you pick it up?

A We always take it to my terminal with a local driver.

Q Now, I show you General Counsel's Exhibit 16 and ask you if that is a bill of lading.

A Yes, sir, that's a blank bill of lading.

Q And who is that contract between?

[382] A Well, that contract is between myself, the shipper and the consignee when I get to the consignee with it.

Q Does that cover the cargo while it's in transportation to the beneficial owner?

A Yes, sir.

Q Now, from the point that you pulled the full shippers load away from the pier, where do you go?

A To my terminal in Virginia Beach.

Q All right. Is that within a 50-mile radius of the port area?

A Yes, sir.

Q Why do you pull it to your terminal?

A Well, we pull it in there and it has to be—we have to cut another bill and it has to be manifested, it has to be hooked to a road truck and given to a road driver.

Q Now, have there been occasions when, for your own convenience, you have opened that trailer and redistributed the cargo?

A Yes, sir.

Q Tell me the purposes that you would do this?

A Normally, there are several reasons. We do it—The main reason is to cut off per diem and get rid of this box that we have no use for in our system. Most of the time, I have my own equipment on the yard empty that I can utilize. We have occasions when road trucks will not hook to these [383] units, the same problems that were mentioned earlier about fifth wheel settings, king pin settings.

Q Would you go through these and also describe what you mean when you said the trailer would not hook onto the equipment that you pulled from the pier to your facility.

A Well, we have a number of tractors—In fact, a majority of our road tractors do not have a sliding fifth wheel. There are many containers, 40's and 20's alike, that have the king pin which hooks into the fifth wheel set farther back underneath the trailer than most trailers. Consequently, when you hook up to it, the frame of your tractor or the tires of your tractor will hit the landing gear or the frame of the trailer. Some of them you are able to pull, but you ruin two tires. Some of them you are simply not able to pull at all; they will not go. You cannot make a turn with them in any way.

As far as the others, we would like to strip them on occasions to cut off the per diem rate. My trailers, we have nothing shorter than a 45-foot trailer or road trailer, nothing shorter than a 13-foot high trailer; and my smallest trailer is bigger than the biggest container around.

Q Now, you said that you pulled the original container from the pier area. Who owns that original container?

A Normally, the steamship line unless it's a leased box.

Q Now, I direct your attention to June of 1975 and ask [384] whether anything unusual happened to Carolina Freight.

A Well, probably a lot of things. One that I can think of, we were—we picked up a container belonging to NYK Lines.

Q What type of container was this?

A It was a 40-foot container.

Q Was it a full shippers load container?

A It was billed as such, yes.

Q And what did you do with it?

A I stripped it.

Q You brought it back to your—

A I brought it back to my terminal, opened the doors and stripped it.

Q Why did you strip it?

A On that particular day, we had—if memory serves me, that container had 26,000 pounds on it. I had two trailers of my own at my warehouse which had loads for Rocky Mount, North Carolina, which is a break bulk terminal. By stripping this container, I loaded both of my trailers which ended up with 42,000 pounds, approximately, on them and the container, of course, was empty. What I accomplished was running two of my trailers with capacity loads on them as opposed to running those two with less than capacity loads and the container which would have been a third vehicle. I saved a trip. And this is the reason that we stripped it.

Q Subsequent or after your stripping, were you notified of [385] any action taken by the International Longshoremen's Association against New York Lines?

A Yes.

Q What was that?

MR. LAMBOS: Excuse me, Mr. Rosenstein. You said what kind of lines?

MR. ROSENSTEIN: I thought it was New York Shipping Lines.

MR. LAMBOS: No, he said NYK.

MR. ROSENSTEIN: Oh, I'm sorry.

Q (By Mr. Rosenstein) NYK Lines.

A That's correct. We were notified that the ILA had made the allegation that we had stripped the container and that NYK would be fined $1,000 if we could not tell them that it had not been stripped.

Q What is the disposition of that at this time?

A At this time, we have made no comment to them about whether it was or was not stripped. Consequently, my interchange with them has been cancelled. I have not pulled any of their containers and I have had some available.

* * * *

[386] Q Mr. McCleskey, at what point did you learn that the steamship line and the International Longshoremen's Association felt that there was a violation of their contract if a full shippers load was stripped at your facility?

A Sometime in 1970, the latter part after October when I came in. Shortly after I came in.

* * * *

[387] Q With respect to the description of the NYK container that [388] was stripped, is this the procedure that you have been following as to stripping full shippers loads at your facility when convenience or necessity prevails?

A Well, I don't strip under those circumstances all the time, not those exact circumstances; but, when it is economically better for my company, yes, sir, I strip them.

Q And how long have you continued to adhere to this policy?

A Well, I came in October of '70 to Norfolk; and the first occasion after that when we had the need and I felt like it was the best thing to do, we did it; and we have been doing it ever since.

Q And has anybody from any other shipping lines since 1970 told you that you could not strip a full shippers load at your facility?

A No, sir.

* * * *

CROSS EXAMINATION

[390] Q You stated that the first knowledge you had with respect to the requirements of the ILA rules were about six months to a year ago, and you received such information from Mr. Merritt. Isn't it a fact that Mr. Merritt and you have had conversations about this subject for a long time prior to this?

A Mr. Merritt and I have had conversations prior to that point; and I told you or I told the other gentleman that I knew about it shortly after I came to Norfolk in 1970. I knew about this agreement.

* * * *

[392] M. L. CHADWICK

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[393] Q All right. Now, what does the delivery order control, what does it mean to you as a motor transport carrier?

A It is instructions to the pier or steamship line to release that cargo to me, the carrier.

Q Now, I show you what has been marked as General Counsel's Exhibit 16 and ask you if you can identify that.

[394] A Yes. It's a bill of lading which is a contract between the shipper and the carrier. This binds the carrier for total responsibility of the cargo that he is handling for this particular shipper until such time he gets it and delivers it to the consignee.

Q All right. Now, do you have equipment interchange agreements with steamship carriers in the Hampton Roads area?

A Yes.

Q Do you have one with U.S. Lines?

A Yes.

Q Do you have one with NYK Lines?

A I believe so, yes.

Q Have you ever had an occasion to personally observe the equipment interchange agreement?

A I have not.

Q What does the equipment interchange agreement provide for, to your knowledge?

A The exchange of equipment. My interpretation would simply be that we would be responsible, and we would check the equipment, the tires, lights and what-have-you, just the container itself or trailer, and we would be responsible.

* * * *

[395] Q Have you had an occasion, upon pulling the container to your facility to strip that container?

A Yes.

Q For what reasons would you strip a full shippers load at your facility?

A Our reasons would be mostly economical, or economics, I'll say.

Q Would you elaborate as to what you mean by economics?

A Yes.

If we should go down to the pier and pull back a 20-foot container that, let's say, has 12,000 pounds on the container, then, of course we certainly are charged per diem for this. Now, we pull these containers. In other words, the cargo is destined to such points as Chicago, Milwaukee or what-have-you which is seven, eight or nine hundred miles away. The per diem rate is quite expensive. I think it goes up to as high as seventeen fifty a day after a certain element of time.

So, consequently, we will strip this cargo off of the container and put it normally in a 45-foot trailer and

[396] consolidate it with twenty or thirty thousand pounds of freight and move it in that way.

Q Has a beneficial owner-consignee of cargo ever told you that you should not or could not strip the container and put the cargo on your own truck?

A No.

* * * *

Q Do you recall when containerization came into the Hampton Roads area?

A I believe '65 or '66.

Q From '65 or '66 to the present date, have you followed the procedure based on your own needs of Hennis Freight to strip a full shippers load at your facility?

A Yes.

* * * *

[397] Q Maybe I misunderstood you, Mr. Chadwick. You said you started with Hennis in 1972?

A Yes.

Q Were you working in the motor truck industry prior to 1972?

A Yes.

Q Was that in the Hampton Roads area?

A Yes.

Q Were you working for another carrier?

A Yes.

Q What carrier was that?

A Associated Transport.

Q To—Were you talking about from '65 to '72, then, what Associated Transport did with respect to full shippers loads?

A So far as stripping them?

Q Yes.

A Yes.

* * * *

CROSS EXAMINATION

Q (By Mr. Lambos) Mr. Chadwick, were you with Associated Transport in 1971 when Associated Transport reimbursed United States Lines a thousand dollars because they were caught [398] stripping one of their containers?

A Yes, sir.

Q And you mean to sit here and tell us that the first time you knew about the—Excuse me. Do you mean to tell us that you are sitting here and saying that no one in the steamship industry had ever told you that your stripping a container at a trucking station was in violation of the agreement between the steamship carrier?

A I did not say that. I said since I had been with Hennis, if you will recall.

Q But you knew this when you worked with Associated Transport?

A That's correct. I did.

Q In fact, you have been at meetings where the steamship carriers—

A You're right.

Q —the ILA—

A Yes, sir.

Q —as a representative of Associated?

A That's right.

Q And you knew that United States Lines had a fine of a thousand dollars imposed against them?

A That is correct.

Q And Associated Transport reimbursed U.S. Lines that thousand dollars?

[399] A That's correct.

* * * *

RECROSS EXAMINATION

[400] Q (By Mr. Lambos) Mr. Chadwick, while you have been with Hennis Trucking Company, you have known of any instance where a steamship carrier was fined because Hennis stripped a container at its trucking station within the Port of Hampton Roads?

A Whether any carrier has been fined?

Q Yes.

A I believe so, yes, sir.

Q So while you have been with Hennis, you have also known about the requirements of the rule, haven't you, Mr. Chadwick?

A Yes; that's right.

* * * *

[402] ALLIE S. McNEIL

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[406] A The shipper or the shipper's agent and the motor carrier. Of course, the shipper could be the consignee in this particular case. But they are the parties to this contract; and it is the sole contract covering the movement of cargo from origin to destination.

Q Is a steamship carrier, such as U.S. Lines, a party to that agreement?

A They are not.

* * * *

[413] A Well, again, the full shipper load is just a designation used by the shipping industry; and it does not govern nor pertain to the motor carrier industry. A full shippers load to a steamship line is not a full load to a motor carrier. Motor carriers have many different types of equipment than steamship lines.

And you can take a 20-foot container or a 40-foot container and take it to a motor carrier's terminal; and the motor carriers have 45-foot high cube trailers which have as much as eight or nine hundred additional cubic feet or storage space. And those are not necessarily a full load to a carrier. It might be a full load to a steamship line.

Q I show you what has been introduced into evidence as General Counsel's Exhibit 5, a letter dated June 7, 1974, signed by yourself to Mr. Jack Mace. Will you tell me the circumstances surrounding your writing that letter?

A This particular letter was a result of a meeting which was called by a subcommittee of the Hampton Roads Shipping Association.

Q Who was at that meeting?

A On behalf of the motor carriers, there were two or three representatives. I was there on behalf of the Association. Mr. Ned Shallow was there on behalf of the subcommittee, and Mr. Joe Murphy and Mr. Paul Fox, T. Parker Host, Jr., was supposedly chairman, I believe, of that [414] committee but he was not present.

Q Was Mr. Mace there?

A No.

Q Okay. What took place at that meeting?

A At that meeting which, incidentally, I think was around March of '74—March or April of 1974, the meeting was called for the purpose to relate to the motor carriers and to the Association that the ILA was now contending that they had a right and was going to fine or strip any container at all if it did not go to the destination—all the way to the destination.

Q And this was when, Mr. McNeil?

A Around March of 1974.

Q Prior to that date, had anybody from the Hampton Roads Shipping Association ever informed you as the president of the Tidewater Motor Truck Association with respect to the stripping of loads within the 50-mile radius? Full shippers loads.

A. No, not if they were destined beyond the 50-mile limit.

* * * *

[416] Q Will you tell me the type of operation that D. D. Jones is in comparison to Associated, Pilot or Thurston?

A Well, D. D. Jones is a combination. They are a motor carrier. In fact, they are the largest motor carrier in the local area, having some 65 tractors there. In addition to that, they are the largest warehousing and distribution company in the local area, having been in business for some [417] 40 years.

Q How is the warehouse operation different than an operation such as Associated, Houff, or Pilot and Thurston?

A Well, the warehousing operation, as I say, is a distribution company. We are set up mainly to handle distribution of cargo; and, of course, about 60 percent

of that is related to the import cargo which comes across the piers.

And the operation we perform for a shipper is different because we will bring cargo that a shipper so designates to our facility and we will perform any services. We actually unload the cargo, we store, we might break it down and repack it, we prepare documents for shipping. We are a distribution firm, in that sense of the word, as far as the warehousing operation is concerned.

Of course, that operation was greatly hindered by the contract itself, not on any control of our own but beyond our control.

Q First of all, let's talk about when did containerization, to your knowledge, come into the Hampton Roads area?

A Well, containers have been in existence—It really became prevalent about 1965; but there were containers in the area prior to that.

Q But when did they first become prevalent?

A About 1965.

[418] Q Now, talking only as to the warehouse operations of D. D. Jones, tell me what D. D. Jones did when a full shippers load came into the pier area, keeping in mind that we are talking about bringing it back to the warehouse. What did you do, what were the procedures that you followed?

A Let me ask you what time frame.

Q 1965.

A In the 1965 period, we would pick a container up. We would have instructions or a bill of lading issued to cover that movement from the pier to the warehouse, just like an over-the-road movement or longer distance. You would pick the container up, unload it—take it to our warehouse, unload it and return the empty unit to the steamship line.

Q In 1965 was that type of container going to your warehouse stripped by ILA labor?

A No, it was not.

Q 1966, tell me the procedure that you followed with respect to bringing full shippers loads to your warehouse.

A The full shippers load would move in tact to the warehouse.

Q In 1967?

A The same.

Q Were there any changes in 1968?

A Yes. In 1968, there was—we were advised that there was a new contract that was going to be effective between [419] the steamship industry and the Longshoremen's Association, and that these units no longer would be able to move to the warehouse facilities within these 50-mile radiuses.

Q Now, how did that change and affect the operation procedures of D. D. Jones' picking up a full shippers load at the pier?

A Well, in a container, we could not pick up a full shippers load in a container because they would not release it to us. We had the right to do so and we had the right to act as the distributor for the shippers, also; but, because of this contract which knowledge of the contract had been passed onto the brokers which in turn had published this to the shippers, although they didn't agree to it, they would not allow—the steamship lines would not turn the containers over to us to come to the warehouse directly.

Q Tell me what D. D. Jones did when you went to the warehouse—or to the pier area starting in 1968 to pick up goods at that time?

A We would send our own trailers to the pier facilities, and our trailers would be loaded and we would dray it back in our own equipment to the warehouse.

Q What did ILA do as opposed to what they did in 1965 through 1967?

A Well, back in 1968 they were stripping the containers on the piers.

[420] Q So deepsea ILA labor would strip the container at the pier; and then, your trucks would pick it up and take it back to the warehouse?

A Yes.

Q Now, how long did that practice remain in tact?
A For about three years or until this CONASA negotiation took place.
Q Are you referring to the Dublin rules?
A Yes.
Q All right. In 1973, the Dublin rules came into effect. Now, how did that change the warehouse operation of D. D. Jones with respect to picking up loads at the pier area?
A Well, at that time, of course, what they classified as a full shippers load owned by one consignee, it was agreed that it could move to a destination within a 50-mile radius under the sole ownership policy.
Q Now, how did D. D. Jones get affected, did it go to your warehouse?
A Yes. Okay. Under a full shippers load as designated, we could pick that container up, take it to our warehouse and then strip it and then return the empty unit to the steamship line; but there were many restrictions. That was only one classification of goods. That was just probably a small pecentage really of the total traffic.
Q Are you talking about import?
[421] A Yes.
Q Is there any other way that it affected the operation of D. D. Jones?
A Well, it restrained our operations. It affected our growth, it affected naturally the business aspect of our company which had been in existence for almost 40 years. It caused us to lose a lot of accounts. Accounts would no longer use the area. Instead of using us as a public service company, they would take the goods to other facilities of their own or other outlying areas which would be greater distances from the port area.
Q Now, Mr. McNeil, have you ever seen the 1974 ILA contract?
A I have seen it.
Q Have you ever read the section that relates to warehousing?
A Yes.

Q I show you what has been introduced as General Counsel's Exhibit 4, the 1974 contract, and ask you to refer to Rule 2(b) (4) on page 70.
A Okay.
Q Is that the procedure you have been describing that came into effect in 1973 by the Dublin rules?
A Yes.
Q And, therefore, continued in the 1974 contract?
[422] A Yes, it did.
Q Now, D. D. Jones, however, are not a party to that contract, are they?
A No.
Q And you have no contractual relationship with the International Longshoremen's Association?
A No.
Q Now, how long has Rule 2(b) (4) been in existence? How long have you followed the 30-day warehousing procedure?
A I believe it was February of 1973. Somewhere in that time frame.
Q And up to what point? Is it still in effect?
A It's still in effect except for one period of interruption.
Q All right. Now, I direct your attention to April 28, 1975, and ask you what happened with respect to the warehousing rule.
A We were advised by Mr. Jack Mace, personally in fact, that the ILA was contending that they were going to try to enforce rules that would supposedly bring all shippers up and down the coastal area in conformance with their own wishes; and, as a result of that, that Mr. Gleason had advised that there was going to be a restriction against any container moving beyond the port area, that they were going to strip them all there. And they would not, during that period of time, [423] allow us to pick up a container and move it to the warehouse.
Q Was there a suspension on the rules on containers effective April 28, 1975?
A Yes.

Q I see. Was the result that occurred similar and identical to the 1968 to 1973 practice where deepsea ILA labor stripped containers at the pier area?

A Yes.

Q And then, the motor transport carrier had to go and pick up those goods at the pier area?

A Yes.

Q Now, approximately how long did the suspension of the rules remain in effect?

A About 30 days.

Q Would it refresh your recollection if May 30th, 1975, they were reinstated?

A Yes.

Q Now, will you tell me the effects of that suspension with respect to the operation of D. D. Jones?

A Well, during that period, we had many shipments which had been destined for our facility to be received and distributed according to the wishes of the shipper; and one large shipper, in fact, began diverting traffic and so did others, saying they refused to use the port area and also use the facilities of D. D. Jones during that period of [424] time, causing our company to lose a whole lot of revenue, on the goods which we would have handled.

Q Do you recall any other effects as a result of the cancellation of the rules on containers?

A Any different types of effects? That is the effect. In other words, you just lose business and you don't get the opportunity to handle the goods.

Of course, the effects, you had two different problems. You had to, again, utilize your own equipment to pick it up, you had delays involved because you could talk about a container moving basically within two to three days from the time it was discharged; but now that the container was going to have to be unloaded at the piers, it was going to be delayed as much as five to eight days before you could get the goods into the warehouse facility.

Many of these goods, of course, or the distributors we worked for, they are awaiting the arrival of the goods.

They have orders pending the receipt of the materials into the facility; and they don't want them delayed at the piers.

* * * *

[431] Q And can you say whether or not the practices which have been enumerated hereby the representatives of other motor truck carriers are similar to the practices which are followed universally by the members of your association?

A Yes, that's true.

Q And, in that respect, then, since the advent of containers, the motor truck carriers have stripped full shippers loads generally when it suited their economic convenience or any other reasons that may appear appropriate to them?

A Yes.

* * * *

[433] Q (By Mr. Bohannon) Now, Mr. McNeill, have you been active in this Association since you have been a member of it?

A Yes.

Q How long has that been?

A Well, the Association has been in existence for probably 25 years. I myself have been a member of it for 14 or 15 years.

Q You personally have been D. D. Jones' representative for that long?

A Yes, I have.

Q That period of time? And, as a member of that Association, how long have you been an officer?

A Well, I've been an officer—It has been about eight or nine years. From second vice president to first vice president and president for a period of three years.

Q Now, in your business with D. D. Jones, do you have [434] contact with other carriers?

A Yes.

Q Aside from your contact from the Association?

A Yes.

Q And as your general work with D. D. Jones and your contact through the Association and your interest and activities in the Association, would that put you in

the position to know without question what the general practice is of motor truck carriers with regard to full shipper loads?

A Yes. In addition to that, I'm also a member, really, of the Hampton Roads Maritime Association; and I deal directly with the committees, with the pier committees, the Association itself and so forth.

Q Now, is the general practice among all the motor truck carriers, such as has been related by, for instance, Mr. Everett, Mr. McCleskey, Mr. Chadwick and the others regarding stripping of full shippers loads?

A Yes.

Q Now, you mentioned that you were governed by the—your contract or the motor truck carriers is the uniform straight bill of lading.

A That is true; and that is the only document that governs—

Q Now, is there anything in this uniform straight bill of lading pertaining to handling of cargo?

[435] A Yes.

Q All right. Would you read us that portion, please?

JUDGE WAGMAN: Is that document in evidence?

MR. BOHANNON: Yes; that is in evidence.

JUDGE WAGMAN: Just let us know what paragraph it is.

THE WITNESS: 2(a).

MR. BOHANNON: It's Paragraph 2(a). I'm trying to avoid your having to read all of this.

JUDGE WAGMAN: Oh, I am going to read everything.

A Paragraph 2(a) of the contract states: "No carrier is bound to—"

JUDGE WAGMAN: We're not reading it.

A Okay. Paragraph 2(a) states that no carrier is bound to transport any cargo by any particular vessel, vehicle or any other means of conveyance. In other words, he can do as he chooses; and that's a part of the contract itself. It's signed and initiated at the time he picks up the cargo.

Q (By Mr. Bohannon) Now, moving over just briefly, to make sure we've got it straight, just how the warehouse business has been handled since the advent of containers, I understand that until the first ILA-HRSA contract entered into in 1968 that D. D. Jones was able to pick up containers at pier facilities whenever they were designated to come to their warehouse and they were not stripped prior to that time?

A Yes.

[436] Q Is that correct?

A That's correct.

Q And that after that contract was entered into, D. D. Jones was able to pick up no containers whatsoever until the Dublin agreement was entered into in '73, is that correct?

A That's correct unless, of course, at one period of time we were handling units beyond the 50-mile radius as a motor carrier which we had sold that authority.

Q I'm talking about your warehouse operation.

A Not within the 50-mile limits, no.

Q So you received no containers whatsoever until the Dublin rules went into effect?

A That's true.

Q Now, when the Dublin rules went into effect and ever since then, you have received containers under the warehouse rule?

A Except for the 30-day inference.

Q Except for the 30-day suspension?

A Yes.

Q Now, tell us again what the effect of this suspension was.

A Well, it ju[illegible] about cut off our business during that period time, having depended upon import traffic for some 60 or 65 percent of our operation; and one large shipper, as I say, diverted traffic. He diverted I know four containers of [437] one shipment which resulted in a loss of some $2500.00 worth of revenue; and, within the next few days, he diverted another four containers, which was another maybe $1800.00 to $2000.00 worth of revenue.

Q Which shipper was this?

A J. C. Penney Company.

Q And in addition to that there were other shippers which had their movements interfered with, Allis-Chalmers was one. We were setting up actually an assembly operation for the Allis-Chalmers Company. They contended that this might knock out their operation entirely. We have this in one of our warehouses over in Chesapeake. They also have their facility in Milwaukee, Wisconsin; and it was a movement, whereas we were bringing in containerized parts for tractors and so forth and putting them together, putting the tires on them and so forth at our building, the lights and safety equipment and things of this nature. And they contended that if these units were going to be stripped at the pier, it would cost them some addition $300.00 per container. First of all, they couldn't afford that; they don't have that much profit built into these tractors. The competition is too stiff. And it would possibly cause them to have to cease doing business with us if this continued.

Q So this continued for this 30-day period?

A For the 30-day period.

[438] Q At which time, the warehouse rules went back into effect?

A Yes.

Q And you have been able to operate your business pretty much in a normal manner since then?

A With the restrictions of the 30-day warehouse rule, which is an hindrance on an efficient operation, as a public service company.

Q That's the Dublin rule?

A That's the Dublin rule, yes.

* * * *

CROSS EXAMINATION

Q (By Mr. Lambos) Mr. McNeil, how long have you been a member of the Hampton Roads Shipping Association, if that's different. The Maritime Association has members of the motor carrier industry as well as steamship industry and so forth. It more or less could be termed as a civic organization.

Q If your testimony was the Hampton Roads Shipping Association, it should be Maritime Association?

A Maritime Association is the proper terminology. And I have been refused admittance into the shipping part of this, any of their negotiation committees or anything. I have even [439] asked personally to be admitted into those negotiations, from the time they started. I advised the Association that it looked like they were getting into areas that were going to effect the motor carrier industry and they had to rights to control. The steamship rights cease at the pier and the motor carrier rights pick up at the pier and govern his movement until he gets to destination.

* * * *

[440] Q And it's also correct that, prior to the Dublin rules in January of 1973, D. D. Jones would have to go down to the pier and pick up any warehouse goods in break bulk fashion, is that not correct?

A That's true for one time period. Prior to this time period, we were free to go and pick it up directly in containers.

Q But from 1968 through 1973——

A You're correct.

Q ——D. D. Jones would go down and pick it up in break fulk fashion?

A Yes.

* * * *

[446] Q All right. Let's take the shipments within the 50-mile limits of the Port of Hampton Roads.

A Destined within 50-miles, I am aware that the ILA and CONASA organization agree that these rules apply.

Q And when did you learn that fact?

A Well, I've learned it, basically, since the rules came into effect.

Q In 1968?

A Yes.

* * * *

REDIRECT EXAMINATION

[453] Q Now, Mr. Lambos asked you with respect to what did you hear at your meetings with respect to alleged stripping violations prior to 1974. And you asked

to explain. Now, explain what you heard and what was the position of the motor transport carriers with respect to the alleged violations for stripping at the motor transport facility.

A The Association has always discussed the container and ILA Unions problems at most all of its meetings if a carrier had a grievance that he wanted to bring up. But the position of the motor carrier industry has always been that they were not a party to the contract and that they were governed by the Bill of Lading contract, which is signed by the shipper as well as the carrier at the time he picks up the shipment.

And he knows that those are the only rules and [454] regulations governing the movement of that cargo. He operates under the Interstate Commerce Commission, under their rules and regulations, and under the authorities granted to him as a motor carrier or as a common carrier. And those are the governing agencies on his operation and that's the only agency.

The steamship line is not even a shipper. The steamship line, in essence, is the same as the motor carrier. The steamship line is a carrier only performing one leg of the service. And the steamship line's authority and control cease at this pier area. In fact, their bill of ladings themselves designate the piers as being the final destination for their service. From that point on is why you have a bill of lading prepared, and that's where the motor carrier picks up and assumes responsibility for the load.

* * *

[467] GEORGE L. MAIER

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[468] Q Could you give us your position with United States Lines in Baltimore?

A I am the port manager in Baltimore.

Q And how long have you been the port manager in Baltimore for U. S. Lines?

A About five years.

Q Do you hold any position with the Steamship Trade Association of Baltimore?

A Yes, I do.

Q Could you tell us what that position is?

A I'm president of that organization.

Q Would you describe for us the identity of the Steamship Trade Association of Baltimore?

A The Steamship Trade Association is an unincorporated association of maritime members in the Port of Baltimore, mainly consisting of steamship carriers, agents and other ancillary corporations allied with the steamship industry.

Q And is United States Lines a member of the Steamship Trade Association?

A Yes, we are.

Q Is the Steamship Trade Association a member of any other unincorporated association dealing with the ILA?

A Yes.

Q Tell us the name of that organization.

A CONASA.

[488] GEORGE L. MAIER

a witness previously sworn, resumed the stand and continued to testify as follows:

VOIR DIRE EXAMINATION

* * * *

[493] Q Now, could you tell us what action United States Lines has taken in each of these cases?

A In cases where it came to our attention, prior to the delivery of such a shipment to a truckman and it came to our knowledge that the intent of the truckman

was to deconsolidate this container and restuff it into his own equipment at his platform, we refused delivery of that cargo to the truckman.

Q Has U.S. Lines handled full shippers loads at its terminal in the Port of Baltimore?

A If we're talking about full shippers loads that we may have stripped from a container, yes.

Q Could you tell us whether there are ocasions when full shpipers loads are, in fact, stripped at the terminal?

A Oh, yes, sir. There were several occasions and several reasons for doing it.

Q Could you give us the occasions and the reasons for that?

A One of the reasons was the one that I just cited in relation to our previous knowledge of a container being deviated from its ultimate destination and being handled prior [494] to its ultimate destination. Another case might be where a container or a chassis or another piece of equipment might be damaged beyond a road-worthy ability to move this container and we would then strip and possibly stuff another container for ultimate movement to destination. A third case may be where the shipper himself might request what we call a pier delivery or an LCL or a break bulk delivery rather than moving it in tact to his facility.

Q Mr. Maier, I show you the documents marked General Counsel's Exhibit 11 and ask you whether this is the collective bargaining agreement for the period from October 1, 1968, to September 30, 1971, between the Steamship Trade Association and the ILA?

A Yes, it is.

Q Could you turn to the rules on containers?

A Yes. Page 3, right at the beginning.

Q In that regard, are these the rules that were adopted by the Steamship Trade Association as a result of collective bargaining in the Port of New York by the New York Shipping Association?

A Yes.

Q And they are the same rules that were in effect in Hampton Roads for the same period?

A Yes.

Q And the same rules that were in effect in the Port of [495] New York for the same period?

A Yes.

* * * *

[496] Q And there is already evidence in the record that in 1971 the negotiations were conducted by CONASA on behalf of all the ports?

A That's correct.

Q Now, were there revisions made in the rules in the collective bargaining between CONASA and the ILA in 1974?

A Yes, there were some general revisions. If we are talking about revisions on maybe putting some interpretations into language, there were some changes, yes.

Q Now, could you tell us what the intent of those negotiations was in June of 1974?

A In June of 1974, of course, the ultimate intent was to come out with a mutually agreeable contract that both sides could live with for the subsequent three years; and the intent also was to maybe codify or put into writing some of the interpretations that had come out of rulings of local committees and substantiated maybe by CONASA container meetings during the previous three years or possibly even going back to the original agreement in 1968.

* * * *

CROSS EXAMINATION

[510] Q Now, when did containers, as we know containers, first arrive in the Baltimore area?

A I was not in Baltimore during the inception of containerization. I only came into Baltimore in 1970. But, as we know containerization today, I would say that the containerization probably started in the late 1960's in Baltimore.

Q When you say the late 60's, do you mean '65, '66?

A In that area. As I say, I was not a resident of Baltimore [511] at the time, so I cannot factually speak to that.

Q When did you first arrive in Baltimore to be affiliated with United States Lines?

A August of 1970.

Q Do you know what a full shippers load is?
A Yes.
Q Would you define it for us?
A A full shippers load is an in tact container moving from a shipper to a consignee directly without any intermediate stops.
Q How many containers does United States Lines handle a year, to the best of your knowledge?
A In Baltimore?
Q In Baltimore.
A About 25,000.
Q How many containers of the 25,000 a year would be full shipper loads?
A I would say in the area of 80 to 85 percent.
Q So, we're talking about seventeen and eighteen thousand, is that correct?
A That's correct.

* * * *

[517] Q Now, I show you two letters dated April 12, 1974, and June 14, 1974, from a Mr. Talbert of Cooper Jarett. Do you know that gentleman?
A No, I don't.
Q Now, if you will read that letter for me, please.
MR. LAMBOS: What date is that?
MR. ROSENSTEIN: June 14th and April 12th.
A Yes.
Q (By Mr. Rosenstein) Now, here was a load that was stripped 287 miles from the Port of Baltimore, is that correct?
A That's what he states, yes.
Q And it was stripped because the load had shifted over the left rear wheel and was unsafe to continue?
[518] A That's what he states.
Q And the ILA contends that that is a violation of their rules on containers?
A I can't speak for the ILA.
Q I show you a letter dated May 15, 1974, and ask you whether or not that is signed by Mr. Fortune.
A Yes.

Q And doesn't that summarize that the ILA contends that those two letters reveal violations of the container rule?
A Right.

* * * *

[523] Q Now, that paragraph says that you were present at the joint container committee meeting where Houff's violations were discussed.
A That's correct.
Q And was that on March 31, 1974?
A Approximately.
Q Now, you contended that the consolidation of house to house containers did not constitute a violation of the agreement, is that correct?
A Yes.

* * * *

[524] Q I show you a letter dated April 11, 1974, from yourself [525] to Mr. Hughes. And I want you to read that letter in its entirety, please.
A All right.
Q Now, the first paragraph you said that a controversy has arisen recently concerning the justification of container fine relating to truckmen stripping containers and transferring the containers therefrom into their own trailers. What controversy were you referring to?
A Well, there were discussions at that period of time that such should not be a violation. There was a school of thought that those were not violations under the contract.
Q Now, tell me all about this school of thought. Who proposed it?
A I don't know who it came from. I remember hearing it within our own committee at one of our meetings. I remember hearing it from other areas. I think some of my contention is based on the feelings of some of our members in the trade, that such was not a violation.
Q All right. Now, these meetings of members of the—Is the Steamship Trade Association?
A Yes.

Q And the Steamship Trade Association is the very association that is party to the ILA agreement?

A Yes.

Q All right. You then go on: "It is a matter of record [526] with the management structure of CONASA that the validity of these fines is in serious doubt." What was the purpose of that statement?

A There were discussions at times at one of the CONASA meetings that such should not be a violation.

Q "And it is now my understanding that there are also some doubts existent among the ILA-CONASA representatives." Who are those?

A Correct. I don't recall.

Q Was this at a meeting that you attended?

A I dare say so, yes.

Q Was this in New York or in Baltimore?

A I don't know. It was a CONASA meeting; I think it was at the meeting in New Jersey.

Q Which would have taken place, when?

A I think that was early '74.

Q So ILA representatives also had doubts as to the violations of stripping loads at motor transport carrier facilities?

A Yes.

* * * *

[528] Q Is it not a fact that these rules apply to containers containing LTL loads or consolidated full container loads?

A I think it's on page four it says that in Section A, yes.

Q And it also says it on page three under containerization, does it not?

A Yes, it does.

Q There is nothing with respect to shippers loads contained in the 1968 contract, is there?

A Those words?

Q Yes.

A No.

* * * *

[529] Q (By Mr. Rosenstein) Now, in your direct testimony, you talked about full shippers loads being stripped at the terminal, is that correct?

A Yes.

Q You mentioned three reasons: The containers being deviated from prior destination, damaged vehicle or a shipper might request this, is that correct?

A Yes.

Q You said that you had approximately 16 or 17 thousand containers a year of full shipper loads which U. S. Lines handled. Of those sixteen and seventeen thousand, to your knowledge, how many would have been stripped at the pier by deepsea ILA labor?

A I'd say—In the course of a year we are now speaking about?

Q Yes.

A I'd say for one of those reasons probably in the area of two to three hundred a year.

Q So a very small amount with respect to sixteen or [530] seventeen thousand containers?

Now, the normal practice, is it not, with respect to full shippers loads, is to allow the load to go through to its manifested destination?

A Correct.

Q And ILA does not strip the majority of full shipper loads at the pier area?

A That's correct.

Q And they receive a royalty payment of two to two fifty a ton for each full shippers load that goes through and is not stripped at the pier by deepsea ILA labor?

A That's correct.

Q And that could be in the neighborhood of forty and fifty dollars per container, depending on the weight?

A Well, the average weight of the container would run about—40-foot containers probably about 15 tons, so we are talking in the area of around maybe $30.00 a container or something in that area.

Q And this money goes into the joint container committee fund?

A Not entirely.

Q Where does it go?

A $1.00 goes into the container royalty fund and a second dollar goes into one of the welfare or pension funds that is a port determination.

[531] Q Now, in the CONASA negotiations, isn't it a fact that this was the trade-off, the royalty payment which would go to ILA for the right of full shippers loads not to be stripped at the pier by deepsea ILA labor?

A I was not party to those negotiations at that time; but, in general, I would say that's correct.

Q Mr. Maier, are you also familiar that the ILA had been given a guaranteed annual wage, were there negotiations with respect to that?

A I know; it's in the contract.

Q And, as a result of those negotiations, wasn't that guaranteed annual wage as a result of ILA giving up the right to strip full shippers loads at the pier area?

A I can't answer that. I don't know.

* * * *

[532] Q (By Mr. Auten) Mr. Maier, for what period of time were you on the STA-ILA committee on containers?

A I think it was from about June, 1971, until—it must have been about February of '74, or something in that area.

Q All right. When you initially became a member of that [533] committee, would at that time the 1968 contract have still been in effect, when you first became a member of the committee?

A Yes, I think it was. If my memory was correct, from the time I got on the committee, yes, it would be.

Q Now, just in general and without referring to the actual wording of the contract for the time being, isn't it a fact that you and other shipper employer members and their representatives very clearly understood the 1968 contract and its rules on containers to apply only to LTL containers and consolidated load containers?

A At that time, I would say yes, that might have been my thinking at that time.

Q And, in fact, this was the position of the industry, was it not?

A I can't speak for the industry.

Q Well, from time to time, you had conversations concerning the rules with other employers?

A No, if you are putting it that way, everybody in the industry agreed to that concept, I would say no, that they did not.

Q All right. Now, as far as the contracts were concerned, it said that the rules applied—and it said in several places, did it not, that they applied only to containers meeting all of three criteria?

[534] A That is correct.

Q And wasn't one of those criteria that the containers be either LCL or consolidated containers?

A Consolidated full container loads I think is the terminology, yes, that's true.

Q Now, how is it conceivable to you—or was it conceivable to you, then, that when that specific criteria set forth the containers to which the rules would apply, how was it conceivable to you, then, that the ILA or anyone else, for that matter, could say that that contract somehow talked about full shippers loads?

A Because no matter what the words said in the contract, there were container committee interpretations of that language that came out, if I can recollect at that time.

Q Yes, sir. Excuse me for interrupting; but, at this point, that is not what I asked. I want to know how this could possible be done when one of the criteria very specifically says LCL or consolidated full container loads?

MR. LAMBOS: I would like for the witness to be permitted to answer the question without being interrupted once the question is asked of him.

JUDGE WAGMAN: Well, it looked like he was not responsive, I think.

A At that time, it wasn't conceivable to me.

* * * *

[535] Q Now, in point of fact, also, you because of your involvement with the committee had many times read the rules through, is that correct?

A I have read the rules, yes.

Q You are aware of the various provisions that they made?

A Yes.

Q Did you know that the rules, when they spoke of the ILA's work jurisdiction, again referred only to LCL and consolidated loads?

A Yes.

Q Did you know that when they specifically talked about stuffing and stripping within the 50-mile radius, that again they referred only to LTL and consolidated loads?

A Yes.

Q Mr. Maier, did you attend meetings in Dublin, Ireland?

A Yes.

Q Between the ILA and CONASA January 25 to 29, 1973?

A Yes.

Q Did you also attend an ILA-CONASA meeting in Miami Beach, Florida, September 11 to 13, 1972?

A Yes.

Q All right. Are you familiar with an interpretive bulletin that came out of those two meetings?

[536] A I am familiar with the bulletin, yes.

Q Are you familiar with minutes of the Dublin meeting?

A I have seen them; my familiarity is something you might have to refresh my memory on.

Q Now, at some point, did you carefully read those minutes?

A I read the minutes.

* * * *

[375] Q (By Mr. Auten) Now, let me hand you General Counsel's Exhibit 22, Mr. Maier. Now, in this letter to Mr. Houff I believe that you recite that you are enclosing certain documents to him which relate to the

rules on containers—explanation on rules on containers. Now, is it not true that with that letter, General Counsel's Exhibit 22, that you enclosed an interpretive bulletin number one coming out of the Dublin meeting, that you enclosed a document entitled "Enforcement of Rules on Containers," that you enclosed minutes of the Dublin meeting and that you also enclosed a typewritten explanation of a house to house move, do you recall all of those things going in that letter?

A Yes, I do.

* * * *

[538] Q (By Mr. Auten) Mr. Maier, I first refer you to General Counsel's 22(b), which is the proceedings of the CONASA-ILA [539] container committee meetings, Dublin, Ireland, January 25-29, 1973.

A All right.

Q Now, these minutes at the top in "A" specify that a number of issues that arose in the meeting in Miami Beach, September 11-13, 1972, remained unresolved, is that correct?

A Yes.

Q All right. And it specifies that the meeting in Dublin was to resolve the open issues and to examine and adopt enforcement of rules on containers.

A Uh-huh.

Q Now, I ask you to examine these minutes, Mr. Maier, and tell me if anywhere in these minutes it is mentioned that a definition of containers was discussed in any way; that is, a definition of containers to which the rules on containers should apply.

A Uh-huh. I don't see anything in these. Proceedings you're talking about, now?

Q Just those minutes that are marked as 22(b).

A No, I don't notice anything there.

Q There is no mention in there of the definition of what containers the rules apply to?

A I can't see anything.

Q Okay. I ask you, now, to refer to a document entitled "Interpretive Bulletin No. 1," and introduced as G. C. 22(e).

[540] Now, I direct your attention to Interpretation 1.1. Would you tell me what Interpretation 1.1 is and what it affects?

A It says "Containers covered." And then, it stipulates the rules on containers which relate solely to the containers meeting either of the following criteria.

Q All right. So these are, then, interpretations or positions on what containers the rules on containers apply to, correct?

A Uh-huh, yes, sir.

Q I direct your attention to the first line. It says, "Relate to containers meeting either of the following criteria."

A Right.

Q Now, it's also true that the contract, the 1968-71 contract, specified that the rules applied to containers meeting all of three criteria, correct?

A That's correct.

Q Not either of the three?

A That's correct.

Q All right. Now, up at the top of interpretive bulletin number one—well, actually it's the second paragraph—it says that this is the first interpretive bulletin that there has been, is that essentially correct as you understand it?

A Yes.

Q And it says that this bulletin sets forth determinations [541] reached by the CONASA-ILA container committee at its meetings of September 11 to 13, 1972, and at its meetings of September 25-29, 1973, is that what the bulletin says?

A That is correct.

Q Mr. Maier, if you attended both of these meetings, doesn't it appear to you that this interpretation one point one, containers covered, was something that was decided at the September 11 to 13 meetings and was not

one of the matters that was still unresolved as of the Dublin meeting?

A I frankly don't recall what meeting it was discussed at. I can't factually state that.

Q Well, do you recall discussions of what containers the rule should apply to?

A Yes.

Q And was there, from the very beginning, agreement on that subject?

A No, there was a discussion on it. There certainly wasn't absolute agreement on it. We had discussions along that line and there were opinions voiced on both sides.

Q Well, in point of fact, CONASA members argued very strenuously, did they not, that the ILA was trying to get something back that it had negotiated away in two previous contracts?

A No.

Q CONASA never contended that?

[542] A I can't recall them contending that, no.

Q Well, what did CONASA contend about what containers the rule should apply to?

A There were several discussions on containers themselves. One discussion related to the owned or leased by carrier element of it in relation to the owning or leasing by the shipper himself. That was part of the discussion. There was another discussion in relation to the three rules having to be applied—for all of the three rules to apply before this violation is contended, as against each individual rule applying on its own merits. That was the big discussion at those meetings.

Q Now, the rules in both the '68 and the '71 contract, it talked about the owned or leased aspect very specifically, didn't they?

A They did.

Q What was left to be argued about that?

A The fact that a shipping company may not own or lease a container that could be moving in this mode. It could be owned by the shipper himself or the consignee himself or by a third party which is not under

the ownership or the leasing arrangements of the shipping company, the ocean carrier.

Q Well, now, aside from the three criteria in the '68 and '71 contracts, isn't it clear that every operative portion of the rules prior to these meetings talked about LCL and [543] consolidated loads and nothing else?

A What do you mean by operative?

Q Every single provision in the rules on containers that describe what containers the rules applied to talked about LCL and consolidated?

A Yes, I would say so.

Q When the contract spoke of the ILA's work jurisdiction, it referred to LCL and consolidated loads?

A Yes.

Q Mr. Maier, I again direct your attention to the Respondents' Exhibit 4 which is before you there. Excuse me. Before I do that, I want to go back just one moment to the 22 exhibit, the very last one in that package. That's General Counsel's 22(f).

Now, this is also one of the documents that you forwarded to Mr. Houff; and it's a typewritten interpretation of what a house to house move is. Who prepared that interpretation?

A I think—I see no heading on it; but I think it was prepared by the Steamship Trade Association sent out to the membership.

Q And what was the date on that interpretation?

A 2-9-73.

* * * *

[546] Q (By Mr. Auten) Well, let me put it to you this way, Mr. Maier: Why would it be that—why did the trucking association state that they wanted to have this meeting?

A Well, because at that time there was some confusion that came out of Dublin. They were word of mouth and hearsay results of our meetings at Dublin and what came out in relation. Specifically, to the warehouse rule. I think that was the big thing, and the trucking rules that came out.

Q In fact, they had also been told by you and by others, had they not, that from now on, they were not to

strip any container that was a full shippers load going to a single consignee, is that correct?

A Correct. Let me put it is way: It was re-emphasized at that time. That had always been a rule that prevailed in Baltimore.

Q Well, let's take a look at that, Mr. Maier. I believe you testified that some twenty—— How many containers are handled by U. S. Lines alone in a given year?

A I think I said about 25,000 through Baltimore.

[547] Q And would that have been true in 1969 through 1972?

A No, sir.

Q What would it have been, then?

A My best estimate—and I'm just roughly guessing, now, I would say '69 it was probably around four or five thousand. And it graduated up to last year up to around 25,000. We have had a virtual increase each year.

* * * *

Q All right. Approximately, how many trucking companies—different trucking companies have picked up containers from United States Lines?

A In Baltimore?

Q Yes. In Baltimore.

A I'd say some place in the area of 100.

Q So U. S. Lines alone has anywhere from 5,000 to 25,000 containers moving onto the docks in this period, which are picked up from possibly as many as 100 different trucking companies. Now, Mr. Maier, I direct your attention to Exhibit 4—Respondents' Exhibit 4; and, without going into it, yet, would you say from your knowledge of those exhibits that [548] there are perhaps about 15 total cases in those exhibits during the period 1969 through 1972?

A Yes, I'd say that's a rough estimate. I haven't counted them, but I will go along with that number.

Q Well now, a number of those cases during that period of 1969 to '72, don't some of those—— Well, certainly some of them find no violations, correct?

A I believe so, yes.

Q And would it surprise you to know that some of them deal with stuffing containers?

A No, it wouldn't surprise me.

Q And that some of them deal with warehousing?
A No.
Q If I represented to you that only eight of them could even arguably have anything to do with full shippers loads, would you take exception to that?
A No, I think it's a matter of record of what's here. If we want to make a count of it, we can sit down and start counting; and so I won't take exception to what you say.
Q And that three of those eight were subsequent to the Miami Beach meetings on CONASA and ILA?
A I won't argue with you.
Q So that of thousands of containers, a hundred trucking companies, we have approximately five cases that may have been considered violations for stripping of full shippers loads, does [549] that sound about right?
A Well, again, all I can say is yes. If you've counted them, I will take your word for it. I haven't.

* * * *

Q (By Mr. Auten) All right. Mr. Maier, you testified about the position that you took with reference to two containers stripped by Houff Transfer at their terminal which they had picked up from the dock and from United States Lines.

Now, at about this same time, you were aware that Lavino Shipping Company and Mr. Jeffrey Footner, who I believe was with Bay Agencies, were both contesting claims identical or very similar on their facts to the complaints against Houff?
[550] A Yes.
Q You were aware of that. Now, in fact, there were approximately—— Well, there were two or three meetings of the container committee at which your cases involving Houff, Mr. Footner's cases for Bay Agencies, and Mr. Eustace, I believe it was, cases for Lavino were all coming up at the same meetings and were similar cases?
A Yes.
Q And you were aware, were you not, of Mr. Footner's position with regard to those?
A Yes.

Q Would it be a fair characterization of Mr. Footner's position that he said absolutely and definitely that these contracts have never applied to anything but LCL or LTL and consolidated loads?
A I think that's in the record, that he has a letter to that effect, yes. It has to be a fair application of his position; he put it in writing.
Q All right. That's in Respondents' Exhibit 4.
A Right.

* * * *

[551] Q Well, wasn't Footner saying to you "not only is it going beyond these rules on containers to fine me, I don't care about your precedents, you have been fining other people wrong, too, "isn't that a fact of what he said?
[552] A He stated that in his letter, yes.
Q Now, were you ever a party to discussions among the shipping employer members, the STA members of the joint committee, which conversations some or one of you said, "We may have been imposing these fines wrongfully"?
A I don't recall.
Q Well, I believe you testified earlier that when you raised a defense to the complaints regarding Houff, I think you said, "There's a lot of doubt about this. It may be illegal."
A I think I raised the doubt in questioning the position of the fines, because, yes, there were some questions raised at that time.
Q Well, you said it might be illegal, didn't you?
A I might have, yes.
Q And if you were going around fining people and thinking that you shouldn't have imposed those fines because the validity of the fines was in serious doubt, because the procedure might be illegal; and you discussed that with no one?
A I discussed that with no one? No, I'm sure I discussed that with somebody. That was part of my opinion at that time.
Q Who did you discuss it with?
A I don't recall.

Q Did you tell United States Lines personnel in New York [553] they may be violating the law?

A No.

Q You never mentioned it to them?

A No.

Q Did you say to the other members of the container committee they may be violating the law?

A Yes. It was discussed at some of our container meetings that there was a difference of opinion.

* * * *

REDIRECT EXAMINATION

[557] They have always contended, as long as I have been exposed to the hearings before the container committee, they have always interpreted that as being a shippers load, as we are talking about here.

Q So that the words, full consolidated load, also apply to a shippers load that was short-stopped?

A Yes, sir. That was the interpretation.

Q And, eventually, the employers concurred in that interpretation, did they not?

A Yes, we did.

Q And the intent in the Dublin meeting was to make clear that the whole world knew that that was the interpretation?

A That is correct.

* * * *

RECROSS EXAMINATION

Q (By Mr. Auten) Mr. Maier, if Houff Transfer, Inc., consolidated two full shippers loads into its own trailers, wouldn't it necessarily have to strip the containers that they were in to do it?

A I would suspect so.

Q So when you are talking about consolidation in Houff's case, you've got to involve stripping, don't you?

A Yes, sir.

Q All right. Mr. Maier, if all interpretations were [558] consistent, that full shippers loads could not be short-stopped, that being short-stopped made them consolidated loads, can you tell me, sir, why then it was necessary for the new Dublin interpretation and for the new contract language in 1974?

A Mr. Auten, it's always, I think, good to come out with new language once in a while to reflect in writing what interpretations are. I think this is done in various bodies. It's done often; and, you know, if you have an interpretation of a rule, you should as long as you have the forum to expose it, it should be exposed and made available to the industry or anybody concerned. This was just an allucidation upon the interpretations putting them in writing.

* * * *

[559] Q (By Mr. Auten) Didn't the union letter simply say "a container has been stripped within the 50-mile radius consigned to such-and-such a consignee at such-and-such a location without ILA," isn't that all it said?

A In effect, that was the alleged claims, yes.

Q It didn't even say what kind of load it was, did they?

A I don't recall any particular thing about it.

Q Didn't the findings on every one of those cases say that we find this to be a violation of the Rule 8(e)?

A Yes, I presume so; and, in the course of those findings, the type of shipment came out in the hearings. The decisions were not made on the basis of the letters alone; the decisions were made on an investigation of the whole alleged violation.

Q I'm sorry, sir. I meant to say Rule 3(e).

Now, Rule 3(e) just says that stripping and stuffing in violation of the rules on containers is forbidden and it provides for fines and says that there won't be any false documentation.

Is there anything else in there?

A Evasion.

Q Evasions. Now, I submit to you, sir, that never once in any document that's in that file is a stripped full shippers load referred to as a consolidated load. Do you dispute that?

[560] A No.

* * * *

[562] Q (By Mr. Bohannon) But, aside from that, tell me when you knew a container would be stripped and you ordered it stripped at the pier?

A Well, as I started to say before, we were always cautious of releasing 20-foot containers to a truckman for fear that we may be saddled with a violation and a subsequent fine. So, normally, when the delivery order is presented, we would question the truckman as to whether he is going to abide by the directions of the delivery order and deliver it directly to the consignee at the address named on said delivery order.

If he says, no, he's taking it some place else, then, we will not release the container until we are assured that it's going to destination as cited on the delivery order. If we have no assurances to that effect, then, we will then talk to the broker and advise him that we will not release the container as a full shippers load, we will have to strip it with ILA labor until such time we can get assurances that it will move intact to destination.

* * * *

[565] Q (By Mr. Rosenstein) Mr. Maier, I'm going to read you a definition of a consolidated container load. And that means a container load of cargo when such cargo belongs to more than one shipper on export cargo or one consignee on import cargo, does that comport with your understanding of a consolidated container load?

A A consolidated container load, yes.

Q Is that correct?

A Yeah.

* * * *

[568] DIRECT EXAMINATION

Q (By Mr. Lambos) Captain Haynes, by whom are you employed?

A The New York Shipping Association.

Q How long have you been employed by New York Shipping Association?

A Since June 1, 1958.

Q What is your present position with New York Shipping Association?

A Executive vice president.

Q When you first started with New York Shipping Association in June of 1958, could you tell us the position in which you were employed?

[569] A I was hired as special assistant to the chairman.

Q And what was the name of the chairman at that time?

A Alexander P. Chopin.

* * * *

[570] Q Now, coming to the period immediately prior to the labor negotiations between NYSA and ILA in 1959, on the basis of your expertise and experience, Captain, could you describe for us the work jurisdiction of the ILA on the various piers and [571] terminals in the Port of New York?

A Well, the ILA provided labor to do the work from the gate of the pier or the terminal—all the work on the terminal to and including loading or discharging cargo in the hold of the vessel. So they had from the hold to the ship out to the outer limits of the terminal. That was their jurisdiction.

Q Before we go further, Captain, could you describe for us briefly the various crafts of workmen that would work within the ILA compound which you have just described?

A Well, of course, the Longshore employees which includes the gangs, the drivers on the dock and the terminal labor, employees on the dock. Then, there are checkers, clerks, checkers who check in cargo—tally the cargo to and from the vessel are on the pier. Then, clerks who handle the clerical work in the office relating to cargo. Maintenance employees that work on maintaining the pier, maintaining the equipment used on the pier and maintaining, for instance, if they have boilers to keep the offices warm in the winter or if they have electricians, et cetera, whatever they need for pier maintenance.

They had carpenters that did shoring work inside the the hold of the vessel—or they still have, and coopers that would open a package or repair a package. For instance, it opened packages for custom inspection and repair packages [572] that are damaged and that kind of work.

Q Now, coming back to the ship itself, now, you referred earlier in your testimony to ships gangs. Could

you tell us what work was performed prior to the advent of containerization and even today on a break bulk ship?

A Yes. As far as the gang is concerned, there are at the present time 17 men in the gang, 8 of them in the hold, 6 on the dock, 3 of them on deck to which they have usually on a normal operation 2 drivers. The drivers bring the cargo from a point of rest on the pier to the stringpiece where it's handled by the dockmen of the gang, put onto the sling or hooked up. Then, it's lifted into the hold and is stowed by the holdmen of the gang. And, on discharge cargo, this process is reversed.

Q When you say that the cargo is handled by the holdmen in the hold of the ship, could you describe what activities would take place in the hold of the ship?

A Normally, the cargo goes on a pallet, under normal standard operations, on a break bulk ship it would go in on pallets. They then take the pieces, the packages, from the pallet and store it or stow it in the corners of the hold until the hold is full. And, on a discharge operation, they remove it from the place of rest in the hold, place it on a pallet piece by piece, package by package, until they build up a pallet. And the pallet, then, is hoisted out, put on the [573] dock; and, at that point, the driver will bring it to its place of rest on the pier where it's either left on the pallet or it's broken down and sorted by marks and chop marks so that it can be delivered into the individual trucker that will come down to pick it up.

Q Now, going back to the period before 1959, you testified a moment ago that, at the present time, there are about 17 such gang members that would work in the hold of the break bulk ship. What was the number back in 1959—in the period prior to 1959?

A It was 21. A foreman in 20 men. Now, it's a foreman and 17 men.

Q So that there has been a reduction, in effect, of three men?

A Three men.

Q Today. As compared with the period at that time. You have brought the cargo, now, to a place of rest

at the side of the pier. What would happen with the cargo at that point?

A Well, when it is brought to the pier or when it is brought from the hatch by the driver of the Hi-Lo to the place it is designated that this cargo is to be stored. As it comes out, of course, there is a layout of the dock where the cargo is to be placed. Then, it will be removed from the pallet; and, at that point, the men in the dock gang will sort it out by chop marks so that it will be quickly [574] delivered when the truck comes down to pick it up.

Q Now, could you describe for us what sorting out by chop marks actually mean?

A For instance, on a shipment of tea, there may be three cases or there may be 100 cases in one lot; and that will be chopped down into 15 or 20 different chop—what they call chop marks. Because maybe three cases belong to one guy and five cases to somebody else, ten cases to somebody else. What they do is that they sort it by these chop marks so that when the trucker comes down to pick it up, he brings a delivery order and requests his cargo with such-and-such marks on it. Then, of course, they know where to direct it and the checker, then, goes and checks those particular marks onto his truck.

Q Now, all of this work was physically done by the ILA Longshoremen working as terminal—in the terminal?

A Yes, sir.

Q Could you tell us what other work was performed within the terminal by ILA Longshoremen?

A Well, the cargo is received initially on the loading ship. The cargo comes to the pier or it came to the pier on those days and it still does on a break bulk operation; and it came to the pier on a truck. Each truck would bring such-and-such amount of cargo from a number of consignees, shippers or from one shipper, depending on the circumstances.

Then, the truck would arrive, it would be checked in. [575] Q Now, who would perform the checking in of that truck?

A The clerks at the pier—at the head of the pier.

Q And to what union did the clerks at the head of the pier belong?

A The ILA.

Q Now, would you continue? What would happen after the truck had been checked in?

A The truck would then be directed down to a spot on the pier. For the loading of a vessel, as the cargo arrived, you have advanced notice of what you are going to receive, so you would lay out your pier where you want cargo going to such-and-such a port. Then, the truck is sent to—— Say, for instance, if the cargo is destined to Yokohama, then, a bay on the pier would be allocated to Yokohama cargo. Then, the truck goes to that bay, where the cargo is removed from the truck, it's tallied by a checker and placed into a point of rest on the pier.

Q Now, who would perform that tally?

A The ILA checker.

Q And who would take the cargo from the truck and place it at the designated spot on the pier?

A The driver of the truck would put it to the tailgate and then the ILA would be there to put it to a point of rest.

Q And the ILA would take it from the tailgate and place it wherever they thought it ought to go within the pier area?

[576] A Yes, because it depends on the—— You have to lay it out, because some cargo is light and some is heavy; and it depends on the consistency of it, the kind of cases, how you are going to stow it in the hatch. So you try to sort it out at that point so that it stows properly when the ship is in to load and you don't have any delays on the loading.

* * * *

Q And I take it that, from time to time, the Longshoremen would make up pallets?

A Yes.

Q And what is a pallet?

A Well, a pallet is a wooden—or primarily made of wood—framework that's about eight inches thick and about four feet wide by six feet long, roughly. There's

different sizes; but that's the average size. The cargo, then, is taken and placed on pallets so that the Hi-Lo could pick them up and bring them quickly to the stringpiece where it is swung up and brought into the hatch.

* * * *

[578] Q Now, in addition to the 210 Longshoremen that might be working on a ship, I take it that there were other ILA craftsmen that might also be working on the ship as might be required?

A Yes, it's what we called—— No, not on the ship. The gangs did all of the ship work. There were other ILA men working with respect to the vessel. That was terminal work.

Q Was there any clerical work to be performed on the vessel with respect to the loading or discharging of cargo?

A That's done up in the office. That's done by the clerks in the office.

Q And would you have checking of cargo as it came in?

A Yes; oh, yes. Yes, checkers would be on the ship.

Q What unions would those checkers be members of?

A The ILA.

If you had any carpentry to be performed on the ship with respect to the stowage of cargo, who would perform that work?

A The ILA carpenters.

Q And that would be in addition to those 210 men?

A Yes.

Q So if there were some broken bags or broken boxes and [579] repairs were required there, who would perform that work?

A That would be done by coopers, which were also ILA.

Q That would also be ILA men and that would be additional to the ships gang members, the checkers, the other people who might be working in connection with that ship?

A That's right.

Q Now, in addition to that, with respect to the terminals, approximately how many people would be servicing the ship having all of these ILA people working?

A At pier nine, we had the staff of about 70 terminal labor employees. And by terminal labor, I'm talking about the Longshore craft employees who assisted in the loading and unloading of trucks, who would snug up the pier and do whatever work there was in connection with the receiving and delivering of cargo. Then, we had, if I remember correctly, about 60 checkers altogether which would include both the checkers assigned to the vessel and the checkers assigned to the pier.

Q That would be in addition to the 70 ILA Longshoremen working in the terminal?

A Yes.

Q And what other employees would you have in that terminal?

A I think there was nine maintenance men who maintained the pier itself. APL owned the pier; it belonged to the company. So they did maintenance work on the pier, the electricians and so on. And there was—— No, I think there [580] was nine coopers and 14 maintenance men. That was it. It's been a long time, now.

Q Now, was the operation which you are describing with respect to APL representative of break bulk operations in the Port of New York for the period prior to 1959?

A Yes. It was similar to all the other operations. They were all about the same.

Q Now, let's go to a container operation. The APL break bulk ship leaves the port and an APL or any other company that you might care to name container ship comes into the port, will you now describe the number of men now working on that ship?

A They usually have two gangs. They have one gang per container crane used; and normally they use two cranes. But they can use three, in which case, they have to put three gangs on. But, usually, they unload—— It depends on the size of the ship and it depends on a number of factors. For instance, with the great big ones, they would use more. But the average container ship, I think, probably would use two gangs and maybe three. One gang per crane.

Q And could you compare for us the speed with which the ship would be loaded or discharged, a container ship by these gangs, as compared with a break bulk ship?

A Well, they can discharge a container vessel with 10,000 tons in less than a day or 14 or 15 hours; and we would have on [581] a break bulk ship of four or five thousand tons, it would take five days.

Q And it would take five days with the labor that you have described?

A All of them working around the clock.

Q Getting back to the period prior to 1959, were there any receptacles for cargo in use on the various piers in the terminals in the Port of New York?

A I'm sorry?

Q Receptacles, boxes or——

A Prior to when?

Q To 1959.

A Yes.

Q Could you describe those for us, please?

A Well, there are a number. The company I was with started using a very small what they called an APL container. It was four by six by six; I remember the exact measurements. It was a small box. We started using those in the early or the late 40's. I don't remember the exact year, but it was in the late 40's we started getting a few of them. Now, in the 50's, when we hauled military cargo, we started getting what we call Conex boxes. They were larger. They were, I think, eight by eight by eight or a little larger than that. I can't remember the exact measurements. Then, the Dravo containers came in, which were eight by eight by eight. But they came [582] in in the early 50's, in that area.

Q Could you tell us who worked in the loading——

A There is one exception. There was another container called a Bowling Green Van. Now, that one was there since I think before World War II. But that was a van that was used for personal effects. It was a large

wooden box about eight by eight by ten, in that area of size.

Q And was that box used for the use of personal carriage——

A For personal effects only.

Q But putting the Bowling Green boxes aside for the moment, would you tell us who performed the work on these various boxes, whether they were Conex or Dravo or the smaller boxes on the piers and terminals?

A Well, when they first started out, the boxes came in, of course, I was still going to sea when the first little containers came. They would be standing up at the head of the pier where they were put in special cargo or high value cargo which required longer stowage.

Q Who would put them in that special——

A The Longshoremen on the pier. Then, they would bring the box down—maybe bring three or four boxes down, in San Francisco—— That's where I first saw them on board, in San Francisco destined for Yokohama, Kobe, and Hong Kong and Manila. I think we got four of them, one for each port. And each one of them contained a number of individual packages of high value [583] cargo that was considered locker stowage; and they put them in this box. We took them there to the port of destination where the box was removed to the pier; and then, they were unloaded on the spot. If I remember right, we unloaded them right on deck; and then, they would put the cargo on a pallet and brought it off the dock.

Q And who unloaded these boxes on the deck?

A The Longshoremen.

Q And who would then deliver the cargo and move it from the stringpiece to the place of ultimate delivery?

A The Longshoremen.

Q Now, do the Longshoremen in the various piers and terminals in the Port of New York do all the work functions up to the time that that cargo is actually delivered to any type of conveyance?

A Yes, they do.

Q What kind of conveyances might they deliver to?

A Oh, the trucks, ladders, railroad cars.

Q And was cargo received by the Longshoremen from the same type of conveyance?

A Yes.

* * * *

[586] Q Now, you are talking about the deepsea trade. Was there also an advent of containerization in another trade?

A Yes, in the Puerto Rican trade, which is really the deepsea trade; but I separate it in my own mind, because it was a different run. And that had become containerized, I think, in originally in '57. And there, were using this one company, the Pan-Atlantic at the time which, subsequently, became Sea-Land. They were using full container ships; that's all they put on is the 35-foot boxes and the 20-foot boxes.

Q Now, Captain, will you tell us what the reaction of Longshoremen in the Port of New York was after the advent of containerization at a point in 1957 with the introduction by the Pan-Atlantic of the first container ship?

A What was their attitude? Well, there wasn't too much of a problem with the Puerto Rican, because they started it in an area where they didn't have too much work. They started it in Newark. And, therefore, it was a new operation to that group of people. The company started business and everybody that they hired was new. It was a job for someone for whom there wasn't that much work in th beginning. Okay. So it meant something to those people. Therefore, that operation got off the ground and got going because it started where it was started, with a group that was depressed.

Q Now, did there also come to be the use of containers here [587] and there on the decks of break bulk ships?

A Yes. In '58 it started—they started handling containers in the overseas routes. They would put them on deck in the squares of the hatches. Mostly, this was Dravo sizes and the 20-footers. They weren't really into the 40-footers yet; but, at that time, it was Dravo, the 20-footers.

Q Could you tell us what the reaction of the Longshoremen generally was with respect to that type of container throughout the port?

A Well, you know, in the beginning, like anything else that starts new, it wasn't too critical. As I said, the first grievance that I have any recollection of or that I can find any record of was the one—I think it was in November of 1958. And this grievance came up because the gangs were complaining about the fact that there were going to be less and less work for gangmen. It didn't seem to matter much to the terminal labor, because they were putting the cargo into the box. The gang was the one complaining, because the cargo was being taken to the pier and put on the ship in one draft instead of ten and twelve drafts.

* * * *

[588] Of course, we were going into negotiations. I think we started the negotiations in '59 at around July.

Q Of 1959?

A Yes. And then, because it was becoming a major issue with the ILA, they made a point of seeing to it that they raised it a number of times prior and during the negotiations.

Q Now, do you remember what the ILA position was in the 1959 negotiations?

A Oh, yes.

Q Pertaining to containerization?

A Yes.

Q Could you describe that position for us?

A They didn't want any containers at all.

Q Now, what did they want done with the containers?

A They didn't want to handle—— They started out they didn't want to handle any containers—no containers. What we wanted was the right to use containers any way we saw fit, obviously; as a management representative, that was our function to see to it and do the best we could to achieve the total use of a new innovative process. It was working out well with the Pan-Atlantic, and the other companies were finding it advantageous to use it on their break bulk ships although no one else had a full

container ship at the time. Only Pan-Atlantic. But the others were using them on their trade routes in the square of the hatch and on deck. It was [589] becoming more and more prevalent. So we sought to be able to use these containers as we saw fit. The ILA said, "We don't want you to use them at all." And during the course of the arguments back and forth, the first right we got, we got the right to use the containers on board the vessel. They backed away from the fact that we could not even put them on the ship. And the first right they gave us, "All right. You can use the containers from the dock to the ship." And that original grievance, as far as the gang was concerned, went down the drain.

Q Now, do you remember whether the ILA, during the course of these negotiations, made any complaints with respect to the handling of containers by anyone other than the ILA in the Port of New York?

A Well, yes, they didn't want anybody to handle them but the ILA. Once we got the right to get them on the ship, now, they said, "Okay. You can take them from the terminal and put them in the ship or vice versa." However, we had been already—by this time, now, we had been or various companies had been sending the box out to, for instance, a manufacturer like Schlitz or Pabst Blue Ribbon, where they would fill the box at the factory and bring it down to the pier and it would go on the ship. And this is what the original language for a shipper's load was. In the 1959 negotiations, that language was used concerning that kind of a shipment where an empty [590] container would be sent to a factory and it would be loaded at that factory by that factory's personnel. Then, that container came down to the pier and then was brought on board the ship. That was the first use of this term. And this had been going on, and that's why we got—because we had been doing it—the ILA gave us that right in the '59 negotiations.

Q Now, you talk about the shipper's load. Was there another term used during the course of these negotiations?

A Well, there was—— Do you mean consolidated?

Q No. Would the words, manufacture's label, mean anything to you?

A Manufacturer's label. And shipper's load, which is synonymous, one with the other.

Q And the ILA referred to manufacturer's label, is that one which went to or from a manufacturer?

A Yes.

Q What was the ILA demand with respect to everything else but manufacturer's label?

A They were going to strip it. I'm using current terminology. These phrases that we are using, now, they weren't even in existence, then.

If a box went out or came into the port with freight for someone other than a manufacturer, they wanted to take the cargo from the box at the pier. So that we don't have any misunderstandings about language, this is exactly what they [591] wanted.

Q And did they have any philosophy with respect to where a container might go, whether within the port area or outside the port area?

A Yes. Well, what we got in the 1959 negotiations was what we called the over-the-road. The stuff coming in from Chicago or Ohio where a box had gone out to one of those places and had been loaded full and brought in, we got the right to move that without any interference.

Q In the 1959 negotiations, the ILA force was present through its various locals in the port of New York. Were there any other local unions in other ports also represented in these negotiations?

A Yes, we had to negotiate. We negotiated the master contract. NYSA at that time had the right to negotiate a master contract for five items. That was wages, hours, contributions for pension, contributions for welfare and the term of the contract. So the other North Atlantic ports, Boston, Philadelphia, Baltimore, Hampton Roads, Providence and Portland, each time we would negotiate, they would send us a letter authorizing us to negotiate those five items. As a consequence, when we met with the ILA, the ILA came in with a negotiating committee of 125 people; and, in that 125 were representatives from

all the different areas of the Port of New York and representatives from all the other ports, Boston, [592] Philadelphia, Baltimore, Hampton Roads, Providence and Rhode Island, all of these other port areas were represented at those negotiations.

Q And actually participated in these negotiations, did they not?

A Well, officially, they participated only in the five items. But those items were so co-mingled with the local New York, conditions, that they were there during the whole thing.

Q Now, following the 1959 negotiations, Captain, did there come to be a rule that was followed with respect to LTL or consolidated container loads in the Port of New York?

A Yes. We have a clause in the contract that provides that the ILA would have jurisdiction over that. In other words, what we did, in the beginning, you know, the ILA handled everything within the port complex—the port terminal or pier area, right from the hold of the ship right onto the pier. Now, they had it all. When the cargo came in, either from overseas or from inland, it had to go through this terminal for it to go on board a ship on outbound cargo. Inbound cargo, it came in on the ship and it had to go through the terminal. Okay. Now, they had the jurisdiction from the hold down to the gate or the end of the terminal. All right. Now, when you take a container and put it into the hatch of the ship, what you are doing is that you are enclosing a piece of [593] that hold. And the ILA contended that's part of their jurisdiction; and we agreed that that is right, that that is part of their jurisdiction. So they said, "Well, if you will take that piece of hatch out and put it on the dock, that's still our jurisdiction, it's part of the hold, which is ours."

Now, what they gave us during negotiations was the right for the cargo that was going through the port and on beyond, they gave us the right for that. They said, "That's okay. We won't touch that. But we still have the right to take it off the ship and put it on the dock

and deliver it. But we won't touch that piece of the hold; that's gone."

They also gave us the right, when the cargo—or a piece of that hold comes out and it's on the dock and it's going to a factory where it backs up to the factory and the factory employees unload it, you've got that. Okay. Even if that's in the local port area. But everything else that's in the port area is ours. Anything that's coming in that stops in that port area and then comes to the pier, that's ours, because that's what we always did. The cargo, it always came down onto the pier on the truck and then we unloaded it and we handled it. That's ours. And the cargo that's coming in from overseas and it comes out of the ship and onto the pier and is going locally, then, we want to take it out of the hold, which is now a container, we want to take it out and [594] deliver it t oa truck. Okay. And we agreed to this. And this is in the 1959 contract.

Q Now, has that been the rule followed in the Port of New York from 1959 right down to the present time?

A Yes.

Q More specifically, Captain, what is the rule that has been followed with respect to a container containing the goods of one shipper or one consignee destined to that consignee's place of business either within or without the area which is short-circuited and stripped by trucker's employees at the trucker's platform?

A That's a violation; you can't do that.

Q Has there been any question at anytime in the Port of New York that this is a violation?

A No.

Q Has there ever been, in your experience, from 1959 to the present time, any situation where there has been any question raised with respect to that violation?

A No.

Q Captain, during the period from 1960 through 1968, were there many issues and questions relating to containerization and the impact of containerization?

A Yes, sir, there was lots.

Q And, as a result, were there strikes and strife and grievances and general unrest in the port with respect to [595] containerization?

A Yes, there was.

Q Did you participate in the 1968 negotiations?

A Yes, I did.

Q Do you remember the demand made by the ILA in the 1968 negotiations?

A Yes.

Q And what was that demand?

A They demanded—— It was very simple. They said, "No container is going to leave the pier property. It's going to stay there. It's our work, and we are not going to allow any containers to leave the pier." I don't remember the exact language, but that was the sense of it.

Q And, again, what was the position of the New York Shipping Association with respect to the issue of containerization?

A We demanded free wheeling with containers.

Q And did there come a point where the parties were unable to agree with respect to the issue of containerization?

A Yeah, there was a strike.

Q And how long a strike did we have?

A I think it was like 33 days. I think in '68 we had a 33-day strike over this.

Q Would your memory be refresh if I were to indicate that the strike lasted for 57 days during that period?

* * * *

[597] Q (By Mr. Lambos) Captain Haynes, as a result of the strike and the intervention by Presidential mediators, did the parties finally reach agreement in the Port of New York on or about January 12, 1969?

A Yes.

* * * *

[599] Now, we have your stipulation on your proposed stipulation which is that the New York contract of 1968——

MR. LAMBOS: For the period October 1, 1968, to [600] September——

JUDGE WAGMAN: Is the same in its language?

MR. LAMBOS: In all ports, including the ports of New York, Baltimore and Hampton Roads.

JUDGE WAGMAN: Is the same except for the fine?

MR. LAMBOS: Except for the amount of $150.00, I believe, Mr. Vandeventer?

MR. VANDEVETER: That's right.

JUDGE WAGMAN: Which was set forth in the Hampton Roads contract and later changed to conform to the New York contract.

Does everybody stipulate? Mr. Rosenstein?

MR. ROSENSTEIN: So stipulate.

JUDGE WAGMAN: Mr. Auten?

MR. AUTEN: Yes.

JUDGE WAGMAN: Mr. Bohannon?

MR. BOHANNON: Yes.

JUDGE WAGMAN: The stipulation is accepted.

* * * *

[601] Q And could you turn to the rules on containers and explain to the Court, if you will, those provisions of the rules on containers which made it a violation for any carrier member of New York Shipping Association to have his container destined either for a point outside the geographic area of 50 miles from the center of the port or destined to a consignee within the port area to have his container stripped at a trucker's terminal?

A Why is it a violation?

Q Yes. What in the agreement makes it a violation?

A Rule 1(a), (b) and (c).

Q Now, could you explain that to the Court, please?

A Well, if a container comes in and it's taken from the pier to a point not its destination and the cargo is removed by other than ILA labor, then, that's a consolidated container and is a violation.

The cargo come to the pier and was picked up by truck and taken to its destination, historically. Okay?

Now, when you take that container off the pier and you stop it and take the cargo out of it and it hasn't gotten

to where it's going, then, that's obviously a deconsolidation. What you're doing is taking it out and you are distributing it. Okay?

That's the same as if you had 15 chop marks in there, 15 different consignees in there. It's exactly the same thing. [602] You're distributing them; you are making up a new load.

Q And is that the invariable practice that has been followed in the Port of New York from the inception of the rules to the present?

A Yes, sir.

* * * *

CROSS EXAMINATION

[610] Q Fine. Now, you talked about a 1959 agreement with New York Shipping, is that correct?

A Yes.

Q Do you have a copy of that agreement?

A A 1959 agreement?

Q Yes.

A No.

Q Here it is. Would you show me where any rules with respect to containers—— Primarily, I'm interested in Rule 8(c), which I am sure you have knowledge of.

A That's not the 1959 agreement.

Q All right. Would you turn to Rule 8(c), please?

A Yes.

Q What is Rule 8(c)?

A It says, "Any work performed in connection with the loading and discharging a container for employer members of NYSA which is performed in the Port of Greater New York, whether on piers or terminals, controlled by them or whether it's through direct contracting out, shall be performed by ILA labor at Longshore rates."

[611] Q Now, is that the first time that rules have been codified in an agreement with respect to containers?

A That's the first time.

Q All right. Now, is it not a fact that 8(c) did not apply to shipper's loads?

A Yes, manufacturer's labels, it did not apply to them.

Q It did not apply?

A Right.

Q And you use the term, manufacturer's label and shipper's loads interchangeably?

A Right.

Q So 8(c) was the first time that rules on containers were placed in an agreement, is that correct?

A Yes, sir.

Q And it was a contention of New York Shipping that shipper's loads, if they were destined or going to a beneficial owner, would not be applicable to these rules on containers?

A Well, the words, beneficial owner, didn't show up for many, many years.

* * * *

[615] Now, going back to 1959 with the first rules on containers in the New York Shipping agreement, have you had knowledge that truckers for their own convenience have been stripping shipper's loads within the 50-mile radius of the port area?

A Well, where that happened, that's a violation of the contract.

Q All right. Have you had knowledge that truckers were doing that since 1959 in the Port of New York?

A We have had lots of grievances filed about it.

Q So you knew that truckers were doing the stripping of shipper's loads at their own transport facilities within a 50-mile radius?

[616] A Well, I knew that they were trying. There were many grievances filed. There were hearings over it; yes.

* * * *

FURTHER CROSS EXAMINATION

[618] Q All right. Back to the subject of a consolidated container load, would you agree with the definition of a consolidated container load as being a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo?

A More than one on export and one consignee on import? Yes, that's a consolidated load.

* * * *

[621] Q Let me ask you what the word, consolidate, means to you? What does one do when one consolidates freight?

A You put it together.

Q Put it together. All right. Let's take some specific examples, now, instead of dealing with——

If I've got a container and I pick it up destined for some point more than 50 miles from the center of the Baltimore port to a single consignee, I pick that container up and break the seal on it at my terminal and determine that the load is imbalanced, that there is too much weight on the back of the container to suit my operation and needs. So I move the load to the front of the container.

Have I consolidated it?

A You moved the load to the front of the container?

Q Right. I don't take it out. I just move it toward the front so that there will be more weight in the front than in the back.

A I can't imagine it happening, but I suppose it could.

Q Well, would I have consolidated that load?

A It's possible you did.

* * * *

[622] Q All right. Another example. What if, instead, I picked up a 20-foot box that I've got to haul through the State of Virginia and I look at the weight limitations that are effective in that state and find that I do not have a sufficient distance between my axles to allow me, under that state's law, to tow that box. What I do is to break the seal——

JUDGE WAGMAN: Excuse me. Mr. Auten. Anybody who wants to talk, there is a nice hall outside. There's going to be silence in here or I'm going to clear this place. This is not a ball park. Now, let's go.

Q (By Mr. Auten) So, what I do is strip the box and I take it out of that 20-foot container and, instead, put exactly the same contents and nothing more and nothing less in a container that belongs to me and take it straight to the consignee. Have I violated the rules, then?

A In my judgment, you have.

Q What have I consolidated, sir?

A The weight—— When you pick up the container, you are [623] aware of the weight. If the bill of lading said that it was owned by one person and going to that person's warehouse or that person's—not warehouse, but factory in Savannah or whatever place it is. When you picked it up, you knew the weight; and, as a trucker, I'm sure you would be aware of the restrictions. So, at that point, if you couldn't haul it over the road, it should have been stripped on the pier. That would be a violation, in my opinion.

* * * *

[630] Q Captain Haynes, going back a little bit in history, of handling cargo on the piers and whatnot, wouldn't it be fair to say that if a box arrived on the pier in any fashion destined to a single consignee, that that box regardless of its size is historically not opened up but has been loaded into the hold of the ship by the Longshoremen?

A If a box arrived on the pier destined to a single consignee?

Q Yes.

A A container, you mean?

Q A box.

A Oh, a wooden box, a crate of some kind?

Q I don't care what it's made of. A box.

A No. Yes, sir.

Q And let's say a box arrives on board a vessel——

A A box of what, sir?

Q Well, you name it. But let's say a box arrived on a [631] vessel and the vessel was to be unloaded at the pier and that box was addressed to one owner, or one consignee and was the apparent owner of the contents, now, historically over the years that box goes without being broken open straight to that consignee?

A Yes, because the box is owned by the shipper or the consignee.

Q And historically ILA labor has never broken into or opened up that box regardless of what the box is?

A That's right.

Q And that box could be just about any size; and you, historically over the years, have gotten boxes in many different sizes?

A Yes, sir.

Q And with containers, those boxes have gotten up to 40 feet in size, isn't that correct?

A Well now, that's a little different, though. The box, in this case, is owned by the steamship company. It's supplied by the steamship company.

Q Well, in many instances it is. It's not 100 percent true, is it?

A I realize it's not 100 percent true.

Q But that's still the same situation?

A No, sir, not with containers it's not the same situation.

[632] Q Well, I mean, the practice is not the same?

A No, the practice is not the same. Containerization is a new technology. To try to relate that to a package and a box and a crate is impossible. You're talking about, you know, apples and oranges.

* * * *

[639] Q (By Mr. Bohannon) All right. Captain Haynes, imagine, if you will, that the bill of lading or the contract or the document which controls the handling of the container or the cargo therein or both contains a specific provision giving the motor trucker the right to transfer that cargo from that container to another container or into any trailer according to the dictates of his business or client, as long as he gets it to his destination, as he is obligated to do.

Now, imagine those circumstances. He has that right. [640] Are you saying that the motor trucker causes a violation if he acts in accordance with a provision of his contract governing his movement of that container and goods?

A Does he cause a violation?

(A long pause)

Yes, he does, if he does something different than is provided in our agreement.

JUDGE WAGMAN: The answer is yes?

THE WITNESS: Yes, sir.

JUDGE WAGMAN: Regardless of whether the client asked the trucker to do it or somebory else or maybe the demands of the State of Virginia? What difference would it make?

As soon as the trucker does it, in violation of the ILA CONASA agreement, it's a violation.

THE WITNESS: Yes, sir.

JUDGE WAGMAN: If it is a container that belongs to——

THE WITNESS: Yes, sir.

JUDGE WAGMAN: Is that your answer?

* * * *

[642] JUDGE WAGMAN: All right. Does anybody have any questions?

I have one question. I have a different contract, perhaps, than you do. I understand the language is supposed to be the same. I have a contract here dated October 1, 1968, and it's the Hampton Roads agreement; and it has to do with the provisions. It starts out:

"These provisions relate solely to containers meeting each and all the following criteria." Do you have that language, Captain?

THE WITNESS: Yes, sir.

JUDGE WAGMAN: And it says here, "1. Containers owned or leased by employe signatory members——" And it says "including containers on wheels. But this is the one I'm concerned about: "——which contain LTL loads or consolidated full container loads." And the specific words I'm looking at is this: "Containers owned by employer signatory members which contain consolidated full container loads."

[643] Now, from your testimony, it appears to me that a trailer or container which comes off a steamship does not contain a consolidated load. It's just a load. And it becomes consolidated if somebody else handles the load, is that right?

THE WITNESS: Yes, sir. When the container comes off the ship——

JUDGE WAGMAN: It's not a consolidated load at that point?

THE WITNESS: ——at that point, they make a determination whether it's a through-shipment or a stripper; and that's the point where it becomes something.

JUDGE WAGMAN: Right. But it isn't consolidated until somebody handles it, right? In other words——

THE WITNESS: Yes, right.

JUDGE WAGMAN: Let's say it came off the Matson Line in San Pedro and it goes up to a public hauler and it says on the container Matson Line. All right. We'll say Matson Line signed this contract. So it's a container owned by an employer signatory at that point, assuming Matson was. All right. But it does not contain a consolidated full container load because there has not been any intermediate handling of the cargo. If that shipment were taken off the Matson container and put into a D.C. truck container of the same volume, you would then have a consolidation, wouldn't you?

[644] THE WITNESS: Then, it was a consolidated load which should have been stripped?

JUDGE WAGMAN: That is what is meant by consolidation?

THE WITNESS: The fact that they did something to it, that it stopped within the area, that made it a consolidated full container load.

JUDGE WAGMAN: Doesn't that stem from the traditional part of the industry, there was a man in the port who consolidated freight, which meant he took the freight from all over and and people brought it to him and he consolidated it, he packaged it or did whatever was necessary to get it on a ship and have it go some place?

THE WITNESS: Right.

JUDGE WAGMAN: So it doesn't necessarily have to mean taking stuff from four sources and making it into a container. It could be taking it from one person, but taking it out of the container it started in and putting it into another container?

THE WITNESS: That's the mirror image of the other end. Coming in, it's the pieces coming in and put

into a container. Now, it's coming in in one piece and is either put into something else or——

JUDGE WAGMAN: All right. Now, so therefore, if somebody is going to load a container belonging to D. C. Transit or D. C. Shipping or some other truck line, now, the container it's going into is not a consolidated container belonging to a [645] party who is signatory to your contract, is it?

THE WITNESS: No.

JUDGE WAGMAN: So I don't understand how you are able to interpret paragraph one as covering the cargo which is going into a container which belongs to somebody who is not a signatory, because it doesn't become consolidated cargo until the truck terminal handles it.

THE WITNESS: Yes, sir, but——

JUDGE WAGMAN: And the container it came in from the ship is not a container which contains a consolidated full container load.

THE WITNESS: Yes, sir, but that is exactly what we are talking about. We are talking about—— The jurisdiction of the ILA was that this stuff came to the pier and those trucks came down to the pier and got it and that was their work. Now, you want to take that over here and do it over there. And that's why it's wrong.

JUDGE WAGMAN: I understand that. But, you see, I have trouble with the language of this contract. I have very much trouble with that. Because, see—— I don't want to repeat myself. But the point is that it only pertains to containers which are owned by employer signatories which contain either an LTL load or consolidated full container loads. And when that load comes off the ship, it's not yet a consolidated full container load. It's just a load.

* * * *

REDIRECT EXAMINATION

[646] Q (By Mr. Gleason) Captain, on the 1968 agreement in Rule 1(a) and it talks about LTL loads or consolidated full container loads, does that say anything about export or import cargo?

A No.

Q Okay. Now, I will give you a situation. I am General Electric and I am putting a container load of

goods together in Germany and I buy 100 units from one company and buy 100 units from another company and eventually I've got five companies I'm buying goods for and I put it in a container. Is that a consolidated full container load?

A Yes, sir.

Q Okay. It is now consigned to Chicago. And it's going to General Electric's plant in Chicago.

A Yes.

Q Would that be a shipper's load?

A Yes, sir.

Q Okay. Now, we have a, quote, "consolidated load," which is also a shipper's load.

A Right.

[647] Q Okay. Now, the moment we take that container and we give it out in transit, General Electric says, "I don't want it to go to Chicago. I want to take it and I want to make a distribution within the 50-mile radius of Norfolk." And he sends it to the XYZ company and it's stripped there. Is that a violation of the contract?

A That's a violation.

Q Okay. Now, what is the difference between giving it to XYZ company and giving it to a trucker who takes that container and strips it at his place and put it on his truck for distribution outside the 50-mile radius?

A There's no difference. It's the same thing.

* * * *

RECROSS EXAMINATION

[657] A My answer to his original question, he said is those two clauses the same, does the wording mean the same. And a cursory examination indicates that they do, that a consolidated full container load and a consolidated load is the same.

* * * *

[665] JAMES J. DICKMAN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

* * * *

[666] Q Could you give us your prior career, that is, the work that you did prior to becoming the president of New York Shipping Association and the president of CONASA?

A I started in the shipping business over 30 years ago as a Longshoreman, checker clerk and, after being discharged from the Marine Corps in 1946, started in various capacities with stevedoring companies from assistant superintendent up to the present, chairman of the board and chief executive officer of Universal Terminal and Stevedoring Corporation in 1968.

Q Now, prior to going with Universal Stevedoring and Terminal Corporation were you employed by any other stevedoring company?

A Yes, I was, by the Jarka Corporation.

Q And could you tell us the ports in which the Jarka Corporation operated?

A It operated in all ports in the North Atlantic and some ports in the South Atlantic.

Q Could you tell us the ports in which Universal Stevedoring operated during your employment at Universal Terminal and Stevedoring Company?

A In Boston, New York, Philadelphia, Baltimore, North [667] Carolina, New Orleans, San Francisco, Oakland and other ports in the California area.

Q As a result of all of your experience with respect to stevedoring and terminal operating, you were here yesterday, were you not, Mr. Dickman?

A I was.

Q Did you hear the testimony of Captain Haynes with respect to the traditional work jurisdiction of the Longshoremen?

A I did.

Q If you were asked to testify with respect to the work jurisdiction of Longshoremen in all the ports in

which you have had experience, what would your testimony be?

A I would testify the same way.

* * * *

A It was.

[670] Q Mr. Dickman, approximately when would you say that containerization as we know it today came to the Port of New York?

A As we know it today, it started roughly in 1957 but grew to a major contention in 1959.

Q And, over the years, what operators normally engaged in containerization?

A I don't understand.

Q From the period of 1959 through 1966, what trade was containerized?

A Oh, primarily the Puerto Rican trade.

Q Did there come a point at a later time when containerization spread to other trades?

A Yes, it did.

Q And approximately when was that?

A We actually started to see it grow to a larger extent just prior to 1968.

* * * *

[673] Q And what other instances would that be?

A Well, if it was supposed to go to a warehouse and it was a full load and it didn't go there, that was one instance. I know of few others.

Q If it went to a distribution station?

A If it went to a distribution station or a consolidation station, of course, that was——

Q So that in each and every instance where the cargo was short-stopped, whether at a trucking station, distribution station, warehouse or what-have-you, the rule was the same?

A It was the same.

Q Now, after the 1968 negotiations, did you remain active in the Maritime industry in various ports?

A Yes, I did.

* * * *

[674] Q And since you became president of CONASA, have you participated in all of its affairs and have you,

as the chief executive officer administered all of the business of CONASA?

A I have.

Q Could you describe the functions of CONASA for the Court, please?

A Well, the functions of CONASA was to try to get uniformity in the ports from Maine to Hampton Roads, and that we would be able to negotiate with the Union on seven master items in the contract and that we would have uniformity in approach and our collective thinking as to the problems of the various ports so that they would remain the same in all ports.

Q Now, after CONASA adopts its collective bargaining agreements as negotiated with the International Longshoremen's Association, are such agreements normally the lead followed by all other ports on the Atlantic and Gulf Coast?

A It is.

Q Did you participate, Mr. Dickman, in the 1971 negotiations between CONASA and the ILA?

A Yes, I was the chief negotiator in 1971.

[675] Q What was one of the major issues in that negotiation?

A Containerization.

Q Had containerization by this time began to spread from the Port of New York to other ports?

A Yes, it did.

Q Was the issue of containerization one that involved a great amount of time and acrimony in negotiations?

A It was the greatest amount of time.

Q And was there a strike in the 1971 negotiations?

A Yes, there was.

Q Did containerization contribute to that strike?

A Yes, it did.

Q And how long a strike did we have in that period?

A 56 days.

Q What was the result of the 1971 negotiations with respect to containerization, Mr. Dickman?

A The results of—— Well, we had the Taft-Hartley. We went back to work in February; and we rewrote the rules on containers. We also agreed that we would have

a joint CONASA-ILA meeting on a quarterly basis to discuss the problems of the various ports, once again to attain uniformity with all the ports.

* * * *

[683] Q Now, after the October 1, 1974, effective date of the rules on containers, did the various problems on containerization continue?

A Almost immediately.

Q And did CONASA continue to have meetings with the ILA with respect to—

A Yes, we did. We had a meeting, I believe, it was again in December of 1974, I believe, in Miami to try to work out some of the problem.

Q Well, what was the position of the ILA at these meetings?

A That the steamship carriers were still violating the agreement, that they were giving their freight to phony warehouses and so forth, and that would have to stop or they [684] were going to have to open up the contract.

Q Did the ILA tell you what they meant by phony warehouses?

A Yes, they did. We have inspectors who go around the port. We saw after willing the warehouse rules, that warehouses were springing up in the port with perhaps 10,000 feet of cargo, and the investigators would catch 40 or 50 containers in the so-called warehouses within a period of six days and you knew it was physically impossible to put the cargo into these so-called warehouses and let it remain there or that they were bona fide warehousemen; and, as a result, the ILA said that this can't be done, this is wrong, it's not the intent of the warehousing rules; and we will open up the contract under clause eight if it continues.

Q Was that testimony you have just given also the subject of discussion at a later meeting after the December meeting in 1974?

A Yes. In January of 1975—— No, strike that. We had so many meetings with it by ourselves. But in March of 1975, Mr. Gleason demanded a CONASA-ILA meeting be held in Tarrytown, New York, because by this time he was very upset.

Q And where was that meeting held?
A In—— I forget the name of the place, but it was in Tarrytown, New York.
Q Tarrytown Conference Center?
A The Tarrytown Conference Center, yes.
[685] Q And what was the result of that meeting?
A The result of the meeting was that Mr. Gleason served me notice that he was reopening the contract under Section A of the 1974 contract, which had a 30-day cancellation clause on the container rules.
Q After the serving of that 30-day notice, Mr. Dickman, what did CONASA do?
A CONASA immediately went into negotiations with the ILA for the entire period; and, at the end of the 30 days, it was not acceptable to the ILA and they served notice of a cancellation of the container rules in the 1974 contract.
Q The notice had been served, you stated earlier, in March?
A I believe it was March 26th, to become effective April 28th. Because I think the 26th was on a Saturday. The 28th of April, 1975.
Q And, during the intervening 30-day period, you testified that there were negotiations and no agreement was reached?
A That's correct.
Q What happened at the end of the 30-day period?
A The union told us that there would no longer be any warehousing, there would no longer be any export warehousing, and that we had to do something to stop these so-called phony warehouses from taking their work away from the port.
Q Did the union permit some containers to move?
[686] A Yes. They permitted to move that were outside the 50-mile radius and containers that were manufacturer's label within the port.
Q After the rules on containers had been cancelled on or about April 28, 1975, did CONASA continue negotiations with the ILA?
A Yes, we did. We had two meetings at the Skyline Motor Inn in New York City, with additional container

carrier principles in attendance along with the CONASA negotiating team.
Q Now, were there physically present at that meeting representatives of all principle container carriers?
A Yes, there were.
Q All right. What was the result of the negotiations?
A Finally, on—I believe it was May 30th, 1975, we agreed that the warehousing rules would remain in effect, provided the cargo stayed in for the 30-day period, that there was to be no export warehousing and that there was to be formed a council or a Steamship Carriers Council of container operators to assist and be present with us at future CONASA-ILA meetings to, as I say, assist and understand some of the problems that they were not privy to before and would be there at these meetings.
Q And have the May 31, 1975, rules on containers remained in effect to the present time?
A They have.
[688] Q Now, will you look at Rule A and first define for me what an LTL load is?
A An LTL load is less than truck load.
Q What does that mean?
A That means that if you don't have a full container of a commodity, it's less than a truck load.
Q Okay. Now, the next word is consolidated full container load. What is that?
A That means that the container is full of a commodity for a consignee.
Q In a consolidated full container load, do you have goods of more than two shippers or more than two consignees?
A It's a single consignee.
Q Are there goods of two shippers contained in the container?
A It could be.
Q How is a consolidated full container load different from a manufacturer label load?
A A manufacturer's label is the goods of the man who has just one commodity.

Q How is a consolidated full container load different from a shipper's load?

A A shipper's load could be one shipper to a consignee.

Q So what you are telling me is there is a difference between a consolidated full container load and a manufacturer's label and shipper's load?

[689] A That's correct.

Q Now, the rules in the 1968 agreement state or relate solely to containers meeting each and all of the following criteria, is that correct?

A Right.

Q And we talk about LTL loads and consolidated full container loads. Now, I'm showing you General Counsel's Exhibit 4, which is the Hampton Roads agreement with the rules on containers contained therein; and I ask you under definitions, to look at a consolidated container load.

A I am not familiar with this agreement.

Q Oh, I'm sorry. Would you read that, please?

A What do you want me to look at?

Q The definition of a consolidated container load.

A It says, "Consolidated container load means a container load of cargo where such cargo belongs to more than one shipper on export cargo, or one consignee on import cargo."

Q Now, you would be familiar with that, would you not, since those are CONASA's rules on containers which were inserted in all CONASA agreements?

A That's right.

Q Okay. Now, is it not a fact that a consolidated container load is the same definition as a consolidated full container load which is contained in your '68 and '71 agreements?

A I would say it is.

[690] Q Thank you. Now, in Respondents' 13 if you will turn to Number H and if you would briefly review it, please

A It says, "If for the purpose of protecting or preserving the present work jurisdiction of Longshoremen and all other deepsea ILA crafts over any containers loaded

with LTL cargo or consolidated full container loads as defined herein, is not accomplished by the provisions of these rules on containers, then, either party shall have the right to renegotiate the provisions or any part thereof by giving notice to the other party. This provision shall not be subject to arbitration."

Do you want me to read the whole thing?

* * * *

Q Now, as I understood your testimony, you had a strike of 57 days prior to the 1971 negotiations, and it was the contention of the ILA that they wanted to strip all containers, [691] to stuff and strip all containers, is that correct?

A That was their initial position, yes.

Q And a compromise was reached in that containers going to a beneficial owner within the 50-mile radius would move freely, is that correct?

A Correct.

Q And containers going to a consignee outside the 50-mile radius would move freely?

A That's correct.

Q And these are known as shipper's loads?

A Right.

Q And you testified that approximately 80 percent of containerized cargo would fall into those classifications?

A Would move freely; that's right.

* * * *

[692] Q You spoke on direct specifically as to the tonnage. In 1968, you said seven million tons of containerized cargo.

A If you want to use a rule of thumb, you can take 80 percent of that and say that 80 percent of it was either shipper's loads that were outside the 50-mile radius or manufacturer's label that was inside the 50-mile radius.

* * * *

[694] Q What was the reason that ILA consentend to allow manufacturer label and shipper loads to go through without being stripped at the pier?

A They always did.

Q So they've always done it?
A Oh, yes.
Q Since the first time the containers came in?
A Since 1959, there was a manufacturer's label that was outside the 50-mile radius and there was no problem.
Q So, historically, this was always the policy of the International Longshoremen's Association?
A That's right.
Q When did discussions first appear with respect to royalty payments on shipper's loads?
[605] A That was the Stein award in 1960.
Q So commencing in 1960, did the ILA get a per diem or an amount of money based on the tonnage as a result of shipper's loads going through and not being stripped at the pier?
A No, the ILA got a—— I suppose the ultimate reason for it was that they made some concessions not only on shipper's loads but on manufacturer's label or cargo outside the 50-mile radius; but the award was based on the type of vessel in those days and still remains the same; and it was 35 cents on a break bulk ship and 70 cents on a semi-automated ship and $1.00 on a fully containerized ship. That's per gross ton.
Q Per ton?
A Per ton.
Q So on a full shipper's load that was going through to a consignee outside the 50-mile radius, they would receive a dollar a ton?
A That's correct.

* * * *

CROSS EXAMINATION

[700] Q Has any employer member of CONASA not adopted the rules on containers?
A Their bound by the majority to all of it. I don't remember us having a dissent; but the CONASA bylaws state that the majority will rule, and all ports will adopt it on an equal basis.
Q Now, have there been different interpretations with respect to the rules on containers in each of the port areas who have adopted these rules?

A Well, there may be misinterpretations; and there's misinterpretations within the same port the day after we think what we know what we are talking about. But it's merely a language problem and not a practical problem.
Q Well, with respect to the public warehouse, is it not a fact that New York, that you allow employees of a public warehouse to strip containers destined to a consignee?
A If it remains in the warehouse over 30 days.
Q What if it doesn't remain in the warehouse for 30 days?
A Well, prior to our dispute in 1974, if it was a matter of inventory taken out and it was a bona fide warehouseman, then, we allowed that cargo to move. But, in most cases, a [701] bona fide warehouseman, his cargo would remain in the warehouse over 30 days.
I know that there has been some disagreement on some of the other ports; but, until it was explained to them not by us but what the intent of the warehouse rule was by the ILA, then, it was changed. But I think that there was a misunderstanding, and that's why we had a difference of opinion. But now, those are part of the items that the various ports may have minor misunderstandings about; but the contract was exactly the same.
Q Would you say if HRSA wants to follow the lead set in New York with respect to stripping in warehouses, that they should be allowed to——
A It's not want the lead says; it's what the contract says.
Q Well, if New York interprets the contract in one way, should not the contract be applied the same in all ports?
A That's why we have CONASA-ILA meetings. If there is a misunderstanding, that is placed on the agenda, whether it be warehousing or anything else; and it is discussed at the next joint CONASA-ILA meeting and then we try to put to right if there has been any misunderstanding.

* * * *

[703& Q On a bill of lading, there is no restriction with respect to a motor transport carrier stripping a shipper's load at his facility, is there?

A There probably isn't.

Q There probably isn't?

A Isn't.

* * * *

[705] Q So you have no control or no business relationship with motor transport carriers?

A Absolutely none.

* * * *

[707] Q (By Mr. Rosenstein) You told me that consolidation is putting cargo into a container, is that correct?

A That's correct.

Q All right. And, at the pier, you could put cargo into an employer signatory's container, is that possible?

A With deepsea ILA labor, right.

Q Okay. So when you talk about consolidation, are you talking about utilizing employer signatory containers?

A Yes, with deepsea ILA labor.

Q If employer signatory containers are not used, isn't it a fact that they couldn't come under your rules on containers?

A That's correct.

Q Following that question, isn't it a fact that a trucker would put cargo onto his own 45-foot containers; and those containers are not employer signatory containers?

A That's correct.

* * * *

[709] Q Now, at that meeting, the rules on warehouses with respect to 2(b)(4) was negotiated?

A The original warehousing was discussed in the '74 contract; and it was codified at Dublin.

Q Well, Dublin was in 1973, right?

A Dublin was 1973, right. And then, it was put in in 1974.

* * * *

[711] Q Prior to the negotiations in 1973 of 2(b)(4) of the 30-day warehousing, was it not the practice of the deepsea ILA labor to strip cargo as they did during the 30-day suspension?

A No.

Q What was the practice, then?

A The practice was and the practice in the Port of New York, going back 75 years, now, was New York is predominantly a warehouse port going back to the days of break bulk when you couldn't get all the cargo on the pier—— And I hope I'm not making a speech. I'm just trying to give you the history. ——that warehouses were used. They were bona fide warehousemen [712] in the Port of New York. The ILA has always worked with the bona fide warehousemen; and, in 1973, and in 1974, many many new warehousemen came in and claimed that they were abiding by what the steamship carriers agreed to on the warehousing rule but they couldn't possibly physically get the cargo in the warehouse. So, therefore, it was a violation.

Q Do you know the procedure in the Hampton Roads area between 1968 and 1973, with respect to loads that were going to a warehouse?

A I believe that it was stripped during that period.

Q Okay. So, in Hampton Roads, then, the same procedure that took place during the suspension of the rules took place between 1968 and 1973 before the Dublin Rules were negotiated?

A Yes, I do; and I believe that there was claimed a misunderstanding; and it was finally straightened out by the ILA.

Q So by the cancellation of the rules on containers, the ILA went back and accomplished the work in a manner they previously did in Hampton Roads in 1968 and 1973?

A I guess that's a fact.

* * * *

[713] Q Mr. Dickman, let me give you an example, hypothetical.

Let's say you had a container that was destined for Louisville, Kentucky, picked up in Hampton Roads; and

the container went approximately 290 miles and, all of a sudden the cargo shifted and the trucker couldn't go on because of safety [714] precautions. And this happened 290 miles and he had another 190 miles to go to Louisville. And he had to open up the containers. At this point, he is outside the 50-mile radius of the port area, correct? Is that a violation of the contract?

A The cargo shifted and it was damaged, no, there would be no violation. That's an exception.

Q That would be an exception. Are you sure?

A I am sure.

* * * *

[719] Q And the employer members such as U. S. Lines would then notify the broker that that container is there and it can be picked up for delivery to the consignee?

A I would assume that's so.

Q So the procedure just flows normally based on the fact that the documentation indicates that it's a shipper's load, correct?

A Right.

Q So the first time that the container is actually weighed would be when the motor transport carrier gets it to its facility?

A That's not a fact.

Q When it's weighed at the terminal?

A But in most cases, at least the cases that I know about, it's weighted at the gate of the terminal operator's place or the steamship carrier's place; and most people have scales on their pier.

Q All right. So, at that point, then, the steamship carrier realeases a container or a shipper's load after it has been weighed, is that correct?

A That's correct.

Q He doesn't make any determination as to whether it's safe to pull it over the roads—the steamship carrier?

A He has nothing to do with it.

* * * *

[723] Q So that it was not until 1970 when the rules were negotiated? For the other ports.

A 1971.

* * * *

[730] Q Mr. Dickman, on direct examination, you did testify as to the definition of a consolidated load that's contained in the '74 contract; and, that definition says that, in case of imports, that it's a load with goods destined or going to more than one consignee?

MR. LAMBOS: I don't think the witness testified to that on direct examination.

MR. AUTEN: Cross examination. Pardon me.

JUDGE WAGMAN: Right. Thank you.

Q (By Mr. Auten) You agreed with the definition that's included——

A I read it.

Q And you said that's the same definition that had theretofore been applied to consolidated loads?

A Yes.

* * * *

[734] Q All right. Do you recall two other documents that came out of both of those meetings? One was entitled enforcement of rules on containers—— Well, do you recall that one?

A Yes.

Q All right. That document was actually drafted prior to the Dublin meeting, was it not?

A It could have been. It was discussed there many times before.

Q And, sir, did it not presume—did that document not presume that the definition contained in interpretation one point one had already been agreed upon?

A It could have been.

Q I want to ask you just a moment, Mr. Dickman, about the Stein award.

First of all, what is a gross ton?

A Twenty-two hundred and forty pounds.

Q And when you refer to the royalty being paid on a gross ton, gross ton of what?

A Gross ton of the cargo.

Q The contents of the box?
A Contents of the box.
Q All right. Now, has the amount of royalty paid changed [735] since the Stein arbitration award?
A Has the amount changed?
Q Right.
A Yes. The second dollar was negotiated in the 1968 negotiations.
Q Well, that negotiation was between CONASA and ILA?
A In 1968, it was New York and ILA.
Q New York Shipping Association?
A Right.
Q What is an approximate labor cost for stripping a ton of freight from a container?
A You will have to tell me the type of freight.
Q Well, let's say——
A The homogenous nature of it.
Q All right. Let's take an example palletized freight, say, 19 skids in a container that would be unloaded with a forklift.
A I would say that that could be done in less than an hour. It would require, in most instances, a Hi-Lo driver plus the cost of the Hi-Lo, and a checker for a half an hour and maybe $30.00 to take out the link from the skids.

* * * *

[737] Mr. Dickman, we have established that there was a difference in the way that loads going to a warehouse were treated in New York and Hampton Roads, is that correct?
A Someone told it to me.
Q Do you feel like the interpretation of the rules that existed in New York was the correct interpretation?
A That was the CONASA contract; that is the correct interpretation.
Q Your position is that the New York port handles that interpretation correctly.
Now, on what basis did you feel that—— Let me get into a specific example. I've got a full shipper's load which is consigned to or going to a warehouse in New

York, one shipper. Now, what happened in New York to that container when it hit the dock?
A It went to that warehouse, and it was discharged and the container was stripped at that warehouse—at the bona fide warehouse with the warehouseman's own employees.
Q Where does the contract that was in effect at that time say anything about warehousing?
A This was always the case in New York. We didn't have to write anything; we knew it.
[738] But did the contract itself say anything about warehousing?
A It didn't have to.
Q In fact, your interpretation was based on a movement of the full shipper's load, wasn't it, just the same as a movement to a single consignee in West Virginia some place?
A Right.
Q Now, did the ILA at the Dublin negotiations contend that that was an incorrect interpretation of the contract?
A Contended it was incorrect?
Q Right.
A I believe that they contended that it was correct.
Q That that was a correct interpretation of the contract?
A Right.
Q So would it have been their position and CONASA's position that nothing was given up by the ILA in the new warehouse rule that came out of Dublin?
A They always have; they've always done it in New York.

* * * *

[753] THOMAS W. GLEASON, SR.

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[754] Q Could you tell us briefly what was the traditional work jurisdiction of the ILA up until containerization prior 1959?

A All the freight to the piers. The trucker drivers put it to the tail of the truck; and we took it off and placed it on the dock floor or dock or placed it on pallets. On the reverse coming in, we had what we called pallet loaders or loaders, where the truck would come down and we loaded the trucks. They would pick it up and take it right to the consignee's place of business.

Q Now, prior to 1959, was there such a container used in the handling of cargo?

A Yes.

Q Could you tell us the type of containers that were handled?

A Well, there were wooden containers. Some was Bowling Green that was testified here today which was household goods. There were small containers—wooden containers, that we used to carry special cargo in. And then, there was Dravo type containers that were brought down to the piers to store valuable * * *.

* * * *

[760] Q Well, now, in 19—— Well, before we get there, can you give us a comparison between the loading of a conventional ship and a container ship, with reference to manhours?

A All right. If you take a 100,000-ton ship, a conventional ship, in and out, it's in the neighborhood of 12,000 manhours. You take a container ship 10,000 tons in and out, you've got 2200 manhours. So your productivity has increased 500 percent.

* * * *

[767] Q Going back to the 1959 negotiations when you had that contract, was there an arbitration with reference to a royalty fund?

A There was. I sat in with McCarty and Professor Stein.

Q And do you recall what that amount was?

A Yes. It was 35 cents for a conventional ship, 70 cents for a conventional ship that had two hatches auto-

mated and $1.00 for a conventional ship or a full container ship and anything over three hatches automated in a conventional ship was a dollar.

Q Now, from that time up until 1968, was that money used for the various welfare pension funds in the Port of New York?

A It was.

Q Now, in 1971, was that amount increased?

A It was increased—— The recommendation came, and when we talked about our funds to make sure our funds would be solvent, because of the increased productivity and the decrease in the manhours worked in the port, that something be paid on tonnage; and the operators would not agree to this, but they came up. The recommendation came from the operators or the steamship people that another dollar royalty be placed on it to be used for welfare, pensions, clinics, and what-have-you.

[768] Q So it was used for the fringe benefit funds—to maintain those benefit funds?

A Right.

* * * *

[774] Q Now, did you reach an agreement?

A We did.

Q And could you tell us the charges, if there were any, with reference to warehousing with those changes?

A As far as my memory serves me, there were no changes except a reaffirmation of what the intent of the contract had been over a period from 1959 on, the same reaffirmation was made.

Q Was it a question of the 30-day provision of a bona fide warehouse?

A That was discussed. That was. Because it was going in one door and out the other, in 24 hours; 30 hours was the maximum it was staying there.

Q Now, you have testified as far as manufacturer's load. Now, has the—— And I will give you an example. If a container load destined for delivery to a consignee outside [775] the 50-mile radius is sent to a trucker's terminal and there either stripped and put into a truck or two 20-foot containers stripped and put into a 40-

foot truck for delivery, would that be a violation of the contract?

A That's a violation.

Q Was that a violation in 1959?

A It was a violation 1959.

Q Has it been a violation from——

A And it's still a violation today.

* * * *

CROSS EXAMINATION

[785] Q All right. So going back to 1959, didn't the International Longshoremen's Association agree to allow manufacturer's labels and shipper loads to go through to the consignee without being stripped at the pier?

A Right.

Q And, in return for that right, you negotiated a royalty payment on each of those containers?

A No, we got an award by an arbitrator.

Q In 1959.

A Right.

Q So for each manufacturer's label or shipper load that was not stripped at the pier, the International Longshoremen's Association received $1.00 per gross ton, is that correct?

A On a full container ship.

Q Right.

A On a conventional ship with two hatches automated, 35 cents, three hatches automated or more $1.00.

* * * *

CROSS EXAMINATION

[789] Q Well, all right. Let's talk about just what it says in your contract. It says a consolidated full container load. Now, does that mean that you have either goods of two or more shippers in one container that is going to one consignee or you have goods of one shipper that is going to two or more consignees?

A In reading this, in my opinion, it would mean more than one shipper, or one consignee.

Q Okay. So that is different, that number one, LTL and consolidated full container loads, that's different from manufacturer label or shipper load?

A That necessarily wouldn't be so.

Q Well, but didn't you just tell me that a manufacturer's label was going from one manufacturer to another?

A That's right.

Q And a shipper's load is going from one shipper with goods to one consignee?

A Right.

Q Okay. So aren't those terms different?

A Than a consolidated——

Q Right.

[790] A Right. They are, yes.

Q That was my question. So they are different?

A Right.

Q Okay. Now, the 1968 rules speak of only LTL loads and consolidated full container loads, is that correct?

A That's what this book says, that's right.

* * * *

[801] Q And, besides that, Mr. Gleason, you carefully consulted with your counsel as to what the legal effect of these rules that you were negotiating was, did you not?

A No, I didn't have to consult with the counsel. And the counsel that was at the '68 meeting was not Thomas Gleason, Jr. He was a participant; but Mr. Waldman was the general counsel for the ILA. But I did not have to consult with him.

Q But you did have legal advice and consultation as to what the language of the rules meant?

A I thought we all knew what they meant.

Q Well, the contracts, Mr. Gleason, and we have stipulated that in all material respects the additions of the contract that were entered into in '68, whether they are on the CONASA page or whether they are in these booklets, are the same rules in the '68 and '71 contracts. Now, both of those contain the following language:

"If the purpose of protecting and preserving the present work jurisdiction of Longshoremen and all other deepsea ILA crafts over any containers loaded with LTL cargo or consolidated full container loads as defined herein is not accomplished by the provisions of these rules on

containers, then either party shall have the right to renegotiate these provisions or any part thereof by giving notice to the other [802] party."

Now, you and your counsel very carefully considered what that language meant, did you not?

A Right.

Q Now, did it never occur to either of you or any of you that when you were talking about your work jurisdiction in that paragraph and you were talking only about LTL and consolidated full container loads, that it might be necessary if you still claimed the right to strip manufacturer's label, that you ought to say that you still considered that your work jurisdiction?

A Well, I think we gave a lot of consideration to a lot of things at that time and especially the violations that was going on where there were supposed to be shipper's loads, as my friend wanted me to say and which I call manufacturer's label, that there were some violations of these where they would take and billed, the documentation was phony documentation and they were billed as full manufacturer's label but we found out in an investigation that they weren't always that way. And we considered that.

Q Yes, sir. And I understand that you considered that, because you put it in the contracts that false documentation was a violation.

A Right.

Q That covered that.

[803] A That covers the manufacturer's labels, that they are phonies.

Q Right. Now, there is a document in evidence—and whether you have seen it or not, it is your testimony that the number of longshore employees and the number of manhours that they have worked have gone down very drastically over the last several years?

A Right.

Q Now, the reason for that, is it not, sir, is because there is a vastly increased amount of container business coming through the port?

A Right.

Q Now, that is why the work has diminished. It's not because Mr. Houff for reasons sufficient to himself strips a container, is it? It's the fact that there are more containers?

A I don't know about Mr. Houff's business, so I can't answer about Mr. Houff. All I am saying to you is and to the operators is that I have insisted continually upon what we agreed in the 1958 contract and we have never deviated from that. Now, I have no interest in what Mr. Houff or any other truckman does.

Q But, Mr. Gleason, it is true that you were reconciled, were you not, to the fact that these containers were going to move from the dock on out to the consignee without any ILA labor?

[804] A Yes, I guess I did.

Q You are reconciled to that fact and you were going to get a royalty on those containers that moved that way?

A Right.

Q Now, you have also referred to what used to be known as customs and practices.

A Right.

Q Now, those have always been or have since 1959, at least until 1968, customs and practices were exceptions to the rules on containers?

A This is what we understood, what the customs and practices were, what we talked about in 1958 and the '59 contract was whatever the practices were as far as the LTL and consolidated containers, we would carry that out. And we are still doing that to this day.

Q Well now, it was the custom and practice, was it not, and didn't members of the shipping association so contend that it was the custom and practice for a motor carrier to strip and reload if a container was overloaded?

A I have nothing to do with that. That's their business. I had nothing to do with that. The ILA has nothing to do with that. I think that the testimony—— Do you want me to go ahead?

* * * *

[809] Q And it's also come to your attention as president of the International that some of these shipping

employers with whom you contract, when Mr. Houff says, "I'm not going to pay your fine," they say, "You're not going to get our containers"?

A Well, I've heard that, but that's none of my business. I'm not involved in it.

Q When these things come to your attention, doesn't it have to follow that this is going to result in more stripping work at the dock?

A No, because we had this in our original agreement in 1959.

JUDGE WAGMAN: Mr. Gleason, Jr., I notice that when questions are asked, your head either goes in a horizontal motion back and forth or vertical. Now, I don't know whether you're answering——

MR. GLEASON: Absolutely not, Your Honor.

JUDGE WAGMAN: Your rhythm is too good. Your rhythm is too good. I think that you should stop moving your head.

THE WITNESS: I don't——

JUDGE WAGMAN: I didn't ask you.

THE WITNESS: I get it out of here in a minute.

JUDGE WAGMAN: I didn't ask you.

* * * *

[824] JUDGE WAGMAN: What was the longshoreman's job with respect to unloading the ship and the stringpiece. What did the longshoremen do in 1925, how far did he go towards West Street?

THE WITNESS: Well, he went all way to the gate.

JUDGE WAGMAN: To the gate of the truck?

THE WITNESS: To the gate of the dock.

JUDGE WAGMAN: To the gate of the dock. And then, wasn't there a trade in New York known as Public Loader?

THE WITNESS: Yes, there was.

JUDGE WAGMAN: And the public loader would take it from a little pile at the end of the stringpiece?

THE WITNESS: That was on import cargo.

JUDGE WAGMAN: Yeah. That's what we are talking about in this case.

THE WITNESS: Yes.

JUDGE WAGMAN: Now, wasn't that public loader peculiar [825] to New York?

THE WITNESS: It was.

JUDGE WAGMAN: There was a whole big business about that, wasn't it?

THE WITNESS: There was a big investigation.

JUDGE WAGMAN: But the point is that I'm trying to make is that the Longshoremen carried it to the end of the stringpiece, and another guy picked it up?

THE WITNESS: No, no.

JUDGE WAGMAN: Where did the public loader come in?

THE WITNESS: The public loader come in, Your Honor, when the truckmen come down to pick up the cargo for the consignee.

JUDGE WAGMAN: Okay. So somebody else put it on the truck, then?

THE WITNESS: No, the public loader put it on the truck.

JUDGE WAGMAN: But the Longshoremen didn't put it on the truck.

THE WITNESS: Oh, he was the—he was a Longshoreman; the public loader was a member of the Longshoremen's Union.

JUDGE WAGMAN: Oh, was he?

THE WITNESS: Oh, sure.

JUDGE WAGMAN: It was a different trade, but he didn't work on the stringpiece?

[826] THE WITNESS: No. Nobody worked on the stringpiece except the guy that made up the——

JUDGE WAGMAN: But the public loader was also a member—

THE WITNESS: Of the Longshoremen's Union.

JUDGE WAGMAN: But he was a member of that craft?

THE WITNESS: Yes, sir.

JUDGE WAGMAN: Gee. I didn't know that. I thought he was a member of another craft.

THE WITNESS: No.

JUDGE WAGMAN: Now, none of the harbors around here like in Hampton Roads, they don't have a public loader?

THE WITNESS: No, they didn't have them. They had freight handler outfits which were ILA, also.

JUDGE WAGMAN: So, in other words, the ILA used to take it from the hold of the ship to the back of the truck, right?

THE WITNESS: No, the ILA longshoremen took it from the hold of the ship and put it to a place of rest on the dock, wherever that may be. And it stayed there until it was cleared for customs, possibly five days or so; and then, the consignee would come down with his delivery orders and bill of lading, the same as he does today, with a container load and pick—and ask for his freight. Then, the company or the dock boss would turn this over and get public loaders who the consignee paid to load the truck and the public loaders would load that. And the funny thing about this, Your Honor, [827] was that they loaded it for three cents a hundred; and they were making money on it.

* * * *

JUDGE WAGMAN: How about in Hampton Roads and Baltimore?

THE WITNESS: In Hampton Roads and Baltimore I guess it's done by freighthandlers.

JUDGE WAGMAN: It's still done by freight handlers.

THE WITNESS: Right.

JUDGE WAGMAN: That's on a bulk——

THE WITNESS: On a bulk ship.

JUDGE WAGMAN: That's all I want to know.

MR. KELSEY: Those are ILA freight handlers you're speaking of in Hampton Roads.

THE WITNESS: Right.

[829] RICHARD PATRICK HUGHES

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[830] Q Now, prior to 1959, did you handle containers in the port of Baltimore?

A Containers? The only containers I seen were containers that were used in conjunction with break bulk operations that were aluminum containers for Alcoa Steamship Line and some metal containers for Bull Line.

Q Could you give us the sizes of these containers?

A Well, the ones from Alcoa were small containers, maybe four by six by eight foot long. And they were aluminum containers made up apparently of Alcoa aluminum. And the ones for Bull Line were metal and they were just a little larger than the ones that I remember for Alcoa.

Q If those containers came and were discharged in the Port of Baltimore, how were the containers handled, did they go—were they free-wheeling and delivered directly to the consignee or were they——

A You're talking about in 1959?

Q Prior to 1959.

A Well, the only ones I seen as far as discharging was [831] concerned, all the containers were, you know, unloaded at the pier. In 99 percent of the cases, that cargo normally went into a locker on the pier because it had special cargoes in it; and, conversely, when the containers were being loaded aboard a vessel, you know 99 percent of the time, the cargo came out of a locker that was on a pier and there were special cargoes that were put into these small metal containers.

Q Now, when a consignee sent the truckman down with the delivery order prior to 1959, how was that cargo delivered?

A It was delivered by the ILA to the tailgate of the truck; and the truck driver actually loaded it into his truck and took it away.

Q Now, could you tell us when was the first time that there was a container ship operation in Baltimore?

A In April of 1963, the steamship line, Sea-Land, brought a ship in, the Mobile, which was a semi-auto-

mated ship. It had three hatches, self-sustaining; but I mean it had a crane aboard the ship itself. In other words, it could unload itself, you know, as today they've got the cranes on the pier. But this ship had its own crane on there and you had two hatches, number one and five, I believe, that were break bulk hatches that handle general cargo.

* * * *

[832] A Well, the contract that was in force in the Port of Baltimore was the end result of the Stein award that was awarded in New York; and it was actually started in '59 and I think we got it in the first part of 1960, you know, the first few months in 1960.

Q Were you present at the negotiations in 1959?

A Yes, in a limited capacity, though, as a recording secretary to the local only to the extent of my local's negotiation locally; not in the negotiations that took place in New York.

Q Now, after the Stein Award in Baltimore, was there an increase of containerization?

A Yes. It has progressively grown up until this year, which is the exception; and I attribute that possibly to the recession.

Q And with reference to the Stein award, then, there was a container royalty paid on the movement of certain types of containers?

A Yes, as testified, 35 cents on conventional ships, 70 cents on semi-automated ships and $1.00 on the fully automated ships.

* * * *

[833] Q Now, could you tell us the amount of money that was paid by the employer members of the association under the Stein award with reference to those types of containers that moved through the port from, say, 1963 up to the present date?

A I could. I have a piece of paper that I acquired this information the day before yesterday. Because between the years 1960 and 1971, up until the formation of the container royalty fund that is in existence today, the money went directly into the pension fund.

Q Could you give us a breakdown on each year?

A Yes, I have in parenthesis 1960 through 1963, $3,000.00 or $3,044.96.

* * * *

[841] Q Did you make any investigation with reference to his statements?

A Yes. His contention was that it was possible that other people in the ILA and the Shipping Associations in the North Atlantic did not concur with our position there. I personally called Mr. Thomas W. Gleason and asked him; and he said they were violations to the agreement. I called a man by the name of John Resta in Philadelphia. He told me they were in violation there. And I called Merritt in Norfolk, Virginia and he told me they were held in violation here. And I so reported back to the committee that I had talked to these people and that they say they are violations all over and that it was uniform.

Q Now, could you tell us with reference to rules on containers up until 1968 what the practice was in the Port of Baltimore with reference to the warehousing of cargo?

A There was no warehousing of cargo in the Port of Baltimore.

Q Was there a change made after 1968?

A Yes. I don't know the exact date. It was not too long before we went to Ireland. Again, there was a situation brought up where someone says that they permit them to warehouse cargo for 30 days in New York. And I subsequently * * *

* * * *

CROSS EXAMINATION

[845] Q So you mentioned that containers started in Baltimore in 1963.

A The first container ships, you know, that resembled fully automated ships we know today.

Q All right. And so there was a period of five years from 1963 until 1968 where you were not operating under a contract with respect to rules on containers, is that correct?

A Written rules is correct.

Q And, during that period of time, you had loads such as manufacturer's label which were coming in those containers, is that correct?

A Correct.

Q And now, you said on direct that you never heard the word, shipper's load, until the hearing today?

A Yes, sir.

Q All right. But to define a shipper's load, if I told you that it was one shipper's goods that were loaded overseas, came in on a steamship carrier that was going to a consignee would this not be a definition similar to a manufacturer's label?

A In that circumstances, yes.

Q All right. So, therefore, the history with respect to [846] manufacturer's label and the definition of a shipper's load that I just gave you would mean that historically ILA labor would not strip those loads at the pier area?

A Correct.

Q Now, from 1963 to 1968, shipper loads or manufacturer's label were going through the port area not being stripped by ILA labor?

A Correct.

Q All right. Truckers were coming down to the pier and picking up from 1963 to 1968 shipper's loads or manufacturer's label containers to get them to the consignee, correct?

A Correct.

Q All right. Is it not a fact, Mr. Hughes, that you knew during that period of time that truckers for their own convenience were taking those containers—20-foot containers to their facilities within a 50-mile radius, opening the seal and putting the cargo into their own 45-foot containers?

A No, sir.

Q You didn't know that?

A I did not know that, sir.

Q Is there any reason that would make you believe that you weren't doing it?

A I know they're doing it, now.

Q You know they are doing it, now?

A That's right. We caught them.

[847] Q Yeah. You sure did in 1968 through 1975, correct?

A Correct.

Q All right. So there is nothing for you to believe that they weren't doing it prior to that time?

A The only thing I can say they were doing it without the ILA's knowledge.

Q But they could have very well been doing it from 1963 to 1968?

A Certainly.

Q You don't think they just started it in 1968?

A I have no way of knowing.

Q Now, if you will look at the rules themselves that we have in the book, on page four, it talks about these provisions relate solely to containers meeting each and all the following criteria. It's on the bottom of page three.

A Page three.

Q That's on the bottom that I just read you, all right?

A All right.

Q And then, we talk about containers owned or leased by employer members which contain LTL loads or consolidated full container loads.

A Right.

Q Okay. There's nothing in there about manufacturer's load or shipper loads?

A No, sir.

[848] Q All right. And (b) says "Such containers."

A Right.

Q Now, doesn't "such containers" relate back to (a) meaning LTL and consolidated full container loads?

A Are you asking me if that is what it means?

Q Yes.

A Yeah, I think that's what it means.

Q So we're talking in (b) just about LTL loads and consolidated full container loads?

A Right.

Q All right. And (c) relates also with the 50-mile radius to LTL loads and consolidated full container loads?

A Right.

* * * *

[855] Q Now, you lost me, Mr. Hughes, because on direct examination, as I understood it, you told me that the 30-day provision, even though it wasn't negotiated in the contract, that that was the way the procedure and custom and practice was with respect to loads going into a warehouse, is that correct?

A No, you asked me between '65 and '68.

Q Right.

A But between '65 and '68 in Baltimore, there was no warehouse rules.

Q I see.

A In other words, that come a few months prior to whenever we had the meeting in Ireland. Just three months prior or four months prior to that. Somewhere around in that area.

Q All right. So you don't know whether manufacturer's labels were going straight into a warehouse and were staying one day or 30-days?

A The only thing I say is that we thought that the manufacturer's label was going to the manufacturer, all the way up until when I just told you. When our 30-day warehousing came into effect in Baltimore, they have to stamp on the dock receipt, delivery order, down at the pier. They have to stamp on there that we certify that this container—the contents of this container is going into a warehouse, name the warehouse and put the address on it.

Q Okay. Now, in '68 to '73, what procedures were followed [856] in the Port of Baltimore when a manufacturer's label or shipper load came in and was not stripped at the pier by deepsea ILA labor but went to a warehouse.

A They were found in violation of the agreement, between that period of time. There was no warehousing.

Q There was no warehousing at all during that period?

A No, sir. Up until just before we went to Ireland.

Q Well, during that period of time, isn't it a fact that deepsea ILA labor was stripping the containers at the pier and the warehousemen had to come down and pick it up in break bulk?

A Well, I don't know who picked them up. The truckers come down and picked them up.

* * * *

[861] Q Now, is it unusual for a container case filed that contained nothing more than three documents?

A Say that again, sir.

Q Is it unusual for a container case file to contain to just documents?

A No.

Q In other words——

A You get a lot of documents when they are found in violation subsequent appeals.

Q To your knowledge, did the union letters ever allege the provision of the contract which had been violated?

A No, sir.

Q They never have?

A No, sir. Not to my knowledge. Maybe they did originally; but recently they haven't done it.

Q Did you hear Mr. Dickman's testimony when he testified that it had been considered that when a trucker touched a full shipper's load at his terminal, that it then became a consolidated load?

A Yes, sir.

Q Do you agree with that?

A Yes, sir.

Q Well, was that the interpretation that was made by your container committee?

A My container committee?

[862] Q Yes.

A You mean the committee in Baltimore?

Q Yes.

A Yes, sir, that's their contention. It has been their contention, is their contention.

Q You say that your committee has said that when a trucker touched it, it in all cases then became a consolidated load?

A Well, I can't say that. I can only say that they said that it was a violation for a trucker to unload it. What they related it to, I don't know. I mean, the only thing I can say is that people presented arguments and then they voted.

Q But you didn't go around referring to that load, after the trucker had touched it as a consolidated load, did you?

A No, I referred to it as—that that guy is a distributor.

Q Let me ask you another question. When a trucker, a motor carrier, takes two 20-foot boxes and strips it and puts them into his 45-foot over-the-road trailer, is he consolidating in violation of the rules—is he stuffing in violation of the rules?

A Yes, he's becoming a distributor. That's my phrase. He's becoming a distributor of the cargo, which is a violation of the agreement.

Q Well now, it's true that your committee has referred [863] to that kind of operation as being both a stripping and a stuffing violation, isn't it?

A Yes, because conversely we have had manufacturer's products that went to—not a trucking station but went to a warehouse; and then, the warehouse loaded them for export cargo and they were found in violation of the agreement.

Q I'm not talking about that situation. I've got the one where the trucker is simply breaking down two 20-foot boxes putting their contents into a 45-foot trailer. And your committee has referred or has spoken of such operations as being stripping and stuffing violations, because you said they were—besides stripping, they were consolidating within the 50-mile radius.

A I don't remember that discussion at the meeting. No, they were found in violation for that container being stripped within the 50-mile radius and it should have been done at the pier with the ILA labor.

Q But, in any event, would you agree with me that you can't stuff a container that doesn't belong to a signatory member of ILA contracts and be in violation of the rules?

A If that's true, sure.

Q So if you're putting anything into your freight and you are not a party to an agreement with the ILA, you haven't violated any ILA contract, have you?

A The truckers do anything they want to do.

Q Well, then, they are not violating the rules for the [864] fact that they are putting it into their trailer, are they?

A We have nothing to say about the trucking companies. The violation was held against Masui Line, in the one case, Masui Line, you showed me; and the other case you're talking about—— I don't know what steamship line it was. U. S. Line. U. S. Line was held to be in violation of the agreement. Not Houff Transfer.

Q Well, U. S. Lines couldn't be penalized for something that Houff did to one of its own trailers, could it?

A I don't know about their trailer. I'm saying that they got fined for unloading the containers—two containers, they were fined $2,000.00. They didn't get fined another thousand dollars for loading it into another container.

Q That's fair enough. We are not talking about stuffing, now. We are talking about a stripping violation, correct?

A In that instance.

Q Okay. Now, if Mr. Houff simply takes the contents of a 20-foot box and neither adds to those contents nor subtracts from them but does take them out and put them into a trailer belonging to him, and that load still goes to the consignee, then, that's not a consolidated load, is it?

A Well, to answer you, I don't know. What you are talking about, to perfectly honest with you, I don't fully understand what a consolidated load is and what isn't, you know.

* * * *

[867] Q (By Mr. Auten) I refer you to General Counsel's 13, page six, paragraph "H" which is the contract between STA and ILA '74 to '77. I will refer you to paragraph "H" which is a definition of consolidated container load.

A Yes, sir.

Q And you see that definition. Is that definition any different than what a consolidated load had been considered from 1968 up to 1974?

[868] A Not to my knowledge, no.

Q All right. Now, then, when goods got moved to a different container or a different box or a different trailer and were going—still were going to one consignee at one place, then, that new box—that new trailer was not a consolidated load, was it?

A I'm going to answer your question. I'll say no to that question.

* * * *

[869] ALVAH J. MERRITT

was called as a witness and, having been first duly sworn, was [870] examined and testified as follows:

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DIRECT EXAMINATION

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[871] Q Are you familiar with the work jurisdiction in the Port of Norfolk with Longshoremen?

A I am, sir.

Q Could you tell us what that jurisdiction is?

A Well, prior to my becoming container inspector, we used to load the ships, unload the ships, load the trucks, unload the trucks, put the freight on the pier in preparation for the ship. In fact, the ILA handled all cargo to and from the vessel, at the pier.

Q Now, when was the first time that you handled a container as a longshoreman?

A Oh, I'd say the latter part of '68, perhaps.

Q And was that container on a conventional ship or was it on a——

A It was on a conventional ship, that's right.

Q And approximately in 1968 and 1969, how many containers would you say were handled through the port, do you have any idea?

A Oh, my goodness. A very minimum amount. Maybe a couple hundred or something like that, maybe.

Q Now, to your knowledge, were there any rules on containers in effect prior to 1968 in the Port of Hampton Roads?

A We didn't have any rules on containers in 1968 until the [872] contract of 1969. They were put into the contract in 1969.

Q But did you participate in negotiations in 1960?

A No, I did not.

Q And could you tell us in the handling of containers in the Port of Hampton Roads whether or not you ever heard the definition or the term Manufacturer's label?

A Certainly.

Q Would you tell us what manufacturer's label is?

A Well, our interpretation is one shipment from one consignee to another, direct without stopping enroute.

Q Now, when did you say you started as an investigator for the——

A October 1, 1969.

Q 1969. In that position as an investigator, have you found alleged violations with reference to the handling of containers by truck?

A Certainly.

Q And if a container which came from Europe or from a foreign port with import cargo and had a manufacturer's label, as such, and was going outside the 50-mile radius to be delivered to the ultimate consignee in the container, was that container stripped by ILA people?

A No, sir, it was not.

Q Did the funds in the Port of Hampton Roads receive a royalty on that?

[873] A In '68 we began to receive a royalty on the manufacturer's labels, yes.

Q When was the first time that you handled a full container ship?

A It was the latter part of '68.

Q And in that particular case, were manufacturer's labels permitted to go through the port outside the 50-mile radius?

A Yes, they were.

Q Now, prior to 1969, were there any rules in effect with reference to the handling of warehouse cargo?

A You see, prior to 1969 I was a longshoreman working on the dock and I was not aware of any rules, because I had no part of negotiations or anything of that nature.

Q In 1970, were there any rules on warehouse cargo?

A Well, according to our contract, in 1969, we began to police the containers with the rules on containers; and we would not allow any containers to go any public warehouses.

Q And that continued until when?

A Dublin.

Q Were you present in Dublin?

A I was.

Q And what happened after Dublin, what was the procedure?

A Well, we came back and had a meeting of the Association, and we implemented the warehouse rules which allowed containers to go to the warehouse to be stored for a period of 30 days, [874] the same as the contract.

Q Now, if those containers were manufacturer's loads went to a warehouse and was not in that particular warehouse for 30 days or more, was that a violation of the rules?

A Definitely.

Q And are you familiar with the opening of the contract that took place in approximately April, 1975?

A I am.

Q And were you present at the meetings in Tarrytown, New York?

A I was.

Q And were you present at meetings at the Skyline Hotel, in New York?

A I was.

Q And could you tell us what the problem was at that time with the handling of the warehouse cargo?

A Well, there were a lot of phony warehouses cropping up and, under the warehouse rules, and were receiving containers and the containers were not staying in there for a period of 30 days. So the ILA suggested that to stop the flagrant violations, we renegotiated the contract.

* * * *

[876] Q Now, after they renegotiated that contract in 1975, were there any changes in the rules on warehousing?

A No.

Q The rules, were they the same as prior to the 1974 agreement?

A Right.

Q Now, with reference to container locals, as manufacturer's label, if a container—if two 20-foot containers coming from Europe, discharged from a ship in the Port of Hampton Roads, was sent to a truckman, picked it up and took it to his place of business and stripped it and placed it in his own truck for delivery outside the 50-mile radius, was that a violation of the contract?

A It certainly was.

Q Was that a violation of the contract prior to 1970?

[877] A Definitely.

* * * *

CROSS EXAMINATION

[878] Q All right. So in 1966 and 1967, isn't it a fact that you knew that when truckers picked up shipper's loads and manufacturer's label at the pier, that they took them back to their terminal and stripped them?

A I didn't know that, no.

Q You didn't know that at all?

A No, sir, I didn't.

Q Have you ever been told that?

A No.

[879] Q Did you ever surmise that they were doing that?

A In '69 I found out that they were; but I didn't know it in '67 and '68.

* * * *

[880] Q And on a delivery order, there's nothing which says that he cannot strip that container at his facility?

A Right.

Q I show you a 1968 agreement and ask you on the rules on containers whether or not they apply to LTL loads and consolidated full container loads.

A Certainly.

Q All right. There is nothing in writing in those rules which talk about shipper's loads and manufactuer's labels?

A They are excluded.

Q And they were excluded because the ILA gave up the right to strip those at the pier when they were going to a consignee more than 50 miles from the pier area?

A Yes, I would say so.

Q And in 1968, you started under the contract to receive a royalty payment for each shipper's load that was not stripped at the pier by deepsea ILA labor?

A Right.

* * * *

[881] Q Okay. So from 1969 to 1973, if it said on the documents that it was going to a warehouse, you stripped it at the pier?

A Right.

Q And then, the freight handlers put it onto the motor transport carrier or the warehouser's truck; and the warehouseman took it back to his warehouse and he could do whatever he wanted to do with it?

A Right.

Q All right. Then, came along Dublin, and the Dublin rules of 1973. And that changed the concept whereby now you allowed that manufacturer's label and shipper's load to go to the warehouse so long as it stayed in the warehouse for a period of 30 days?

A Right.

Q When you suspended the rules on containers on April 28, 1975,—you being the ILA—you referred back to the 1969-1973 [882] period where the cargo was stripped at the pier?

A Right.

Q And then, when you reinstated the rules on May 30, 1975, you then went back to where the goods were being stored in the warehouse for a 30-day period?

A Right.

Q So, during the period of the suspension, you went back and did the same type of work that you had done between 1969 and 1973?

A Right.

* * * *

Q (by Mr. Auten) Mr. Merritt, I refer you to General Counsel's Exhibit 4, which is the 1974 through 1977 collective bargaining agreement for Hampton Roads. And I refer you to the rules on containers incorporated therein, page 67 "H" where consolidated container load is defined. Is that the same definition, to your mind, that you have applied to consolidated container loads?

A Certainly.

Q From 1968 up to 1974?

Now,——

JUDGE WAGMAN: He didn't say a word. He's just shaking his head. The reporter—— If you gaze out in space and [883] shake your head, the recording machine doesn't pick that up.

THE WITNESS: Yes. Certainly.

Q (By Mr. Auten) A consolidated container load?

A Right.

* * * *

[884] Q All right. Would you consider that when he simply took it from the box and put it in his trailer without adding to or subtracting from it, that he had made a consolidated load?

A I would not say so, no.

* * * *

[888] A Not with what they were charged under, no. Not in all cases, because—— Well, if I may——

Q In other words, they are not all in there, that's what you are telling me?

A Right.

Q Well, you are familiar with the operation of the warehousing companies in this area, D.D. Jones and Associated?

A Yes, I am.

* * * *

JOINT EXHIBIT #1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

5-CC-791

CA-75-441-N

WILLIAM C. HUMPHREY, ETC., PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, ET AL.,

and

HAMPTON ROADS SHIPPING ASSOCIATION, RESPONDENTS

Norfolk, Virginia

September 17, 1975

Before: HONORABLE ROBERT R. MERHIGE, JR.,
United States District Judge

Appearances:

M. T. BOHANNON, JR., ESQUIRE
BRUCE D. ROSENSTEIN, ESQUIRE

For the Petitioner

SIDNEY H. KELSEY, ESQUIRE
THOMAS W. GLEASON, ESQUIRE
HERZL S. EISENSTADT, ESQUIRE

For Respondent Longshoremen's Associations

BRADEN VANDEVENTER, ESQUIRE
C. P. LAMBOS, ESQUIRE

For Respondent Shipping Association

* * * *

[52] JACK W. MACE

was called as a witness on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[55] BY MR. ROSENSTEIN:

Q Would you tell the first date that the containers appeared in the Hampton Roads port area?

A A few containers started moving through Hampton Roads approximately 1965, just a few.

Q Have they continued to be present in the Hampton Roads area to the present date?

A They have.

Q Now, will you define for me what a full shipper's load is?

A A full shipper's load would be a container load of goods belonging to a single beneficial owner.

* * * *

[56] In 1968, the first contract between the Hampton Roads Maritime Association was negotiated; is that correct?

A That is correct.

Q All right.

With respect to full shipper's loads in 1968, did they go through not being stripped at the pier by Deep Sea I.L.A. labor when destined to a beneficial owner more than 50 miles from the port area?

A That is correct.

Q I request that you look at the 1968 agreement and refer to page 64.

Is it not a fact that in the rules on containers, it was negotiated only with respect to L.T.L. loads and consolidated container loads?

A That is correct.

Q On page 65, it states that these provisions relate solely to containers meeting each and all of the following

criteria: Number one refers to L.T.L. loads and consolidated container loads, correct?

A Correct.

Q What is number two? What does that mean?

A Such containers which come from or go to any person, including consolidator, distributor, et cetera, and who is not the beneficial owner of the cargo. Such containers [57] would be stripped or stuffed by the I.L.A. labor.

Q Now, neither one or two refer to a full shipper's load; is that correct?

A That is correct.

Q And if you will refer to page 68, subparagraph 8, it talks, does it not, only of LT.L. cargo or consolidated full container loads?

A That is correct.

Q There is no mention in the rules of containers in the '68 to '71 contract with respect to the stripping of full shipper's loads?

A No.

Q Now, would you refer to the 1971 contract?

THE COURT: PX-2?

MR. ROSENSTEIN: I am sorry?

THE COURT: PX-2.

MR. ROSENSTEIN: Yes, it is, your honor, on page 66.

And were the rules on containers very similar to the 1968 agreement?

THE WITNESS: They were very similar in many respects.

BY MR. ROSENSTEIN:

Q Did they relate to L.T.L. and consolidated full container loads?

A That is correct.

[58] Q Nothing on the rules of containers in the '74 agreement with respect to the stripping of full shipper's loads?

A That is correct.

Q If you would refer to petitioner's 3, the October '74 agreement.

On page '67 of that agreement, it talks in terms of a consolidated container load. Now, the previous contract talked about L.T.L. and L.C.L. loads. Is a consolidated container load also considered as an L.T.L. or an L.C.L. load?

A Yes, if it had cargo belonging to more than one owner.

Q And the rules on containers speak in terms of consolidated container loads: Could they not?

A Yes.

Q Those are the type of loads which the deep sea I.L.A. labor desired to be stripped at the pier?

A That is correct.

* * * *

[59] If you would refer back to petitioner's 3, the most recent contract, respondent I.L.A. and CONASA met in Dublin, Ireland, as you specifically stated, in January of 1973. Did they at that time negotiate a 30-day warehousing exception to the rules on containers?

A Yes, on import cargo.

Q Would you explain to the Court what the 30-day warehouse clause provided for?

A It was negotiated because, historically, [60] certain types of cargo would be warehoused upon entry into the country before being sent to its final destination. I.L.A., recognizing that, negotiated a 30-day warehouse rule providing that cargo would be placed in a bona fide public warehouse, and provided cargo remained there for 30 days—at least 30 days—and that warehousing charges covering that were paid.

Q Was that embodied in the contract as rule 2-B-4?

A Yes.

Q Did there come a time when the present container rules found in the October 1974 contract were negotiated?

A Yes.

Q And did that occur in June of 1974?

A Yes.

* * * *

[67] Q Now, I direct your attention to April 28, 1975. I ask you whether or not the rules on containers as contained in the October '74 agreement were suspended?

A That is correct. They were.

Q And was that done pursuant to a 30-day notice under rule 8 of the contract?

A It was.

Q And were the rules thereafter reinstated on May 30, 1975?

A They were.

Q As a part of the suspension of the rules, were the warehousing rules contained in 2-B-4 of the contract suspended?

A They were.

Q Mr. Mace, as a result of the cancellation of the rules on containers, would you describe for the Court what effect that had on the employer members of the Hampton Roads Shipping Association?

A cancellation of the rules on April 28th, the I.L.A., at that time, upon the cancellation of the rules did permit certain containers to move through the port area, such as manufacturers labelled cargo. It caused in one particular [68] case some containers to be diverted to, or threatened diversion to outside state area. Other containers were held in storage until a resolution was reached between management and labor on renegotiated contracts.

Q Was there a lot of cargo out in the open on the docks as a result of cargo being stripped at the pier?

A I would have no knowledge of—direct knowledge of that.

Q All right.

Nothing further.

THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MR. LAMBOS:

Q Mr. Mace, it is true, is it not, that before January 1973, there was no warehousing exception in the port of Hampton Roads?

A That is correct.

Q In other words, if a full shipper's load was to be warehoused in the port of Hampton Roads, is it not true that the I.L.A. would strip that full shipper's container at the pier and it would then be trucked to the warehouse?

A That is correct.

Q Is it also not true that beginning with the 1968 collective bargaining agreement between Hampton Roads Association and the I.L.A., any container, any container which [69] was to be stuffed or stripped within the 50-mile radius of the port of Hampton Roads by other than either the I.L.A. or the employees of the shipper, was deemed mutually a violation of the contract?

A That is correct.

Q Is it therefore not true that the collective bargaining agreement for the period October 1, 1968, to September 30, 1971, prescribed the delivery by a carrier of a full shipper's load to a consolidator or trucker who was to strip the container?

A Yes.

Q Now, is it also not true that you were the secretary of the joint container committee in this port from 1969 down to the present time?

A That is correct.

Q And is it also not true that there have been many occasions—in 1969, 1970, in 1971, in 1972, in 1973, '74, and '75—in which your committee mutually determined that where a full shipper's load had been stripped by the employees of other than the shipper, that the carrier was in violation of your rules?

A That is true.

Q No further questions.

THE COURT: Any further examination?

MR. GLEASON: One or two questions, your honor.

[70] CROSS-EXAMINATION

BY MR. GLEASON:

Q Mr. Mace, just to clear up a point on the notification that the I.L.A. gave with the cancellation of the rules. Isn't it a fact that when the cancellation was

given that manufacturers labor—or shipper's loads, as we call them—were still exempt and were able to go through to the consignee?

A That is true, they were exempt; they could proceed.

* * * *

[71] Q Mr. Lambos asked you a qustion concerning the stripping of full shipper's loads at the pier area. Now, between 1968 and 1973, prior to rule 2-B-4, the 30-day warehousing clause, wasn't it a fact that loads which were destined for a public warehouse were stripped at the pier by deep sea I.L.A. labor?

A Yes.

Q But if that load, full shipper's load, was not destined for a public warehouse, but was destined to a beneficial owner more than 50 miles from the port area, wasn't it a fact that load was not stripped at the pier by deep sea I.L.A. labor?

A That is also correct.

* * * *

RECROSS EXAMINATION

[72] Q Turning to Mr. Rosenstein's last question, I would say that we all agree if a shipper's load was destined to go from Norfolk to any point outside the 50-mile area, and in fact, was transported out, that was not handled by I.L.A. labor; was it?

A That is correct.

Q However, if that same container was shortcutted and went to a deconsolidation station of any kind, whether it be a consolidator or trucker, and the shipper's contents taken out and stripped there before they were taken to that area 50 miles from Norfolk, that was always deemed a violation in this port; is that not true?

A That was also a violation. My question pertained to a beneficial owner's facilities outside. But deconsolidator, yes.

Q And a trucking station?

A And a trucking station would be a violation.

MR. ROSENSTEIN: Could I clarify one thing?

Mr. Mace, that is, is it not, the case that the I.L.A. makes specifically that if a container, if the seal is broken within the 50-mile radius by a motor transport carrier,

that [73] that is a violation of the rules on containers as embodied in your contract when the container is destined for a point more than 50 miles outside the port area?

THE WITNESS: If the cargo is removed from the container by a trucker, then that is a violation.

MR. ROSENSTEIN: All right.

That is exactly the reason, specifically, in this case that the joint container committee was called together and that it was decided jointly that a violation of the container rules had been made out?

THE WITNESS: That is correct.

MR. ROSENSTEIN: Thank you.

THE COURT: You say that from 1960, there were many occasions that the committee held under certain circumstances that stripping was a violation. What action was taken, if any?

THE WITNESS: The ocean carrier was notified of the decision of the joint container committee and fined.

THE COURT: The fine was imposed?

THE WITNESS: Yes.

* * * *

[74] CLETUS E. HOUFF

was called as a witness on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[75] Q Now, do you utilize steamship lines to pick up cargo?

A Yes.

Q Have you been engaged in the picking up of cargo in containers?

A Yes.

Q And when did you first start this practice?

A When containers came into being. I would [76] estimate, 1966.

Q Now, as one of the lines which you utilize, was U. S. Lines a shipper?

A Yes.

Q Now, will you explain to the Court how Houff Transfer is notified if they have been selected as the motor transport carrier?

A They are notified by agents or brokers located within the city where the containers are debarked or offered back for transportation.

Q Do you then proceed to the pier area?

A They, in turn, notify you and arrange for you to receive delivery papers, bills of lading and so forth, which you carry to the pier for authorization to pick up the containers.

Q What do you do when you go down to the dockside facility, to the pier?

A These papers are given to the line which had the container, and at that point interchange papers are completed covering each individual container which we receive.

Q Now, Mr. Houff, are you familiar with the term "full shipper's load"?

A Yes.

Q Would you explain your understanding of a full shipper's load?

[77] A It is a container that is loaded by a shipper, loaded to its full capacity, destined to one consignee or owner in this country.

Q Now, I direct you attention to February 19th of 1974, and ask you whether you had occasion to pick up any containers on that date?

A We did.

Q Would you explain where they were picked up?

A We picked up two containers from U. S. Lines in Baltimore, Maryland, destined to the Union Carbide Corporation in West Virginia.

Q Is that a point more than 50 miles from the port area of Baltimore, Maryland?

A It is in the commercial area of Charleston, West Virginia, and it is approximately 400 miles from Baltimore.

Q Did you at that time have an equipment interchange agreement with U. S. Lines?

A We did.

Q Would you explain to the court what an equipment interchange agreement is?

A It is an agreement that spells out terms and conditions under which you agree to interchange equipment, the per diem charge for that equipment, and it varies from different types of equipment. This is what they call a master [78] agreement and puts you on the approved list to do business with each carrier with which you have negotiated this agreement.

Q Now, getting back to the two containers in question. What size containers were they?

A They were 20-foot containers.

Q All right.

What did you do with those 20-foot containers after you picked them up?

A We took them to our Baltimore terminal.

Q Now, were those 20-foot containers picked up intact?

A They were.

Q Deep Sea I.L.A. labor had not stripped those containers at the pier: is that correct?

A That is correct.

Q What did you do with them when you got them to your facility in Baltimore ?

A We unloaded the containers onto Houff trailers for over-the-road transportation.

* * * *

[81] THE COURT: But in February of '74, if you picked up a container that was violative of the laws, that is, so far as being able to transport it, did you strip it there at the pier?

THE WITNESS: Never.

THE COURT: Well, did you move it over any portion of the highways of Virginia to your terminal?

MR. ROSENSTEIN: Could I clarify? I think I can help.

THE COURT: Well, you would like him to answer, but you may clarify anything.

THE WITNESS: We may have moved some from piers here in Norfolk to our terminal, which would be, the streets of Norfolk, roughly three blocks.

THE COURT: Well, was it your understanding, however, that that was violative of the laws of Virginia?

THE WITNESS: If the laws of Virginia apply to Norfolk streets, it was.

THE COURT: I see.

All right. Go ahead.

BY MR. ROSENSTEIN:

Q When you got a container back to your facility here in Norfolk, what did you do to determine—how did you determine whether it met the Virginia State Laws?

A We pulled across the scales and weighed it and [82] measured it.

Q Okay.

So after you weighed it, did you then make the determination based on the weight distribution of the cargo?

A Yes.

Q If you found that the weight distribution was in violation of the law, what did you do?

A We backed it onto the dock and transferred it to a Houff trailer.

Q Now, in addition, to meet Virginia state regulations, what are some of the other reasons that a motor transport carrier would strip a 20-foot container and consolidate it on a 45-foot container?

A Safety is the second reason. Particularly, going into the state of West Virginia. If you ever have travelled U. S. Highway 60, thye have real sharp curves on the mountain roads that date back 40 years ago with no improvement. I wouldn't say no—may have been widened a little, but stil have the same surface they had 40 years ago.

These containers loaded to the roof with that much weight—and I say that much weight; we are talking in

round figures of 40,000 pounds per container—that makes it a real hazard, particularly in wet weather, to move such equipment over the road.

* * * *

[88] Was your equipment interchange agreement cancelled?

A Yes.

Q Was that in July of 1974?

A Yes.

Q All right.

Referring to petitioner's 18, the February 6, 1975, letter. Were you selected as the motor transport carrier to pick up containers that had been shipped on U. S. Lines?

A Yes.

Q Did you attempt to then pick up that cargo at the pier?

A No, because the broker wouldn't release the paper to us.

Q Why wouldn't the broker release the paper to you?

A Because U. S. Lines said we couldn't—didn't have an interchange agreement with them.

Q And that shipment was to be picked up where?

A At the port in Norfolk.

Q Here in the Norfolk area?

A Here in the Norfolk area.

* * * *

[89] Q Have you been been selected in the Norfolk area by a broker to specifically pick up cargo which had been carried on U. S. Lines?

A Yes.

Q This was between July of 1974, after the [90] cancellation of the interchange agreement and the present date?

A Yes.

Q Okay.

Can you be more specific as to just the Norfolk area? How many times you were denied the right to pick up that equipment?

A I would estimate 30 to 40 times.

Q And in terms of monetary loss, what would you estimate this has cost Houff Transfer?

A Just in Norfolk?

Q Yes.

A Somewhere between $15,000 to $20,000.

Q Now, directing your attention back to 1965 and 1966. You state in your testimony that to the best of your recollection, containers came into the Norfolk area about that time; is that correct?

A Yes.

Q All right.

With respect to full shipper's loads, such as was defined in the correspondence, what did Houff Transfer do when they picked up those type of loads? Starting in 1965 and 1966.

A On a small container, we transfer them to Houff trailers.

Q So was the procedure in 1965 the same as you describe in your testimony with relation to the two containers [91] that you picked up in Baltimore?

A Yes.

Q In 1966, did Houff do the same thing with respect to full shipper's loads?

A Yes.

Q In 1967, did they do the same thing?

A Yes.

Q In 1968, did Houff do the same thing of picking up containers which were destined to a beneficial owner more than 50 miles from the port area and they were going to go to the beneficial owner? Did Houff do the same exact thing as you described in your testimony?

A Yes.

Q In 1969, did they do the same thing?

A Yes.

Q 1970?

A Yes.

Q 1971?

A Yes.

Q And each suceeding year through the present date, have they done the same thing?

A Yes.

Q All right.

Going back to 1965 and 1966. Was Houff Transfer ever fined or was Houff Transfer ever asked to reimburse a fine of [92] any of the shipper's as a result of doing the same activity that they have done since 1966 to the present date?

A No.

* * * *

CROSS EXAMINATION

[94] Q Turning to your employees, are your employees members of any labor organization?

A No.

Q Has the I.L.A. ever sought to organize your employees?

A No.

Q Has the I.L.A. ever demanded of you that you turn over your employees to them and make them members of the [95] I.L.A.?

A No.

Q Has the Council of North Atlantic Shipping Associations or the Hampton Roads Shipping Association asked that you become a member of that organization?

A No.

Q Have you had any relations with any of the I.L.A. leadership in the port of Hampton Roads?

A No.

Q Have they ever made any demands on you?

A No.

* * * *

CROSS EXAMINATION

Q Now, with reference to the interchange agreement, what exactly is this interchange agreement?

A It is a standard interchange agreement that is patterned after the American Trucking Association as to the [96] standard interchange agreement between motor carriers.

Q Well, does it say anything about the cargo? Where it is going, destination, anything like that?

A Does it say anything about the cargo?

Nothing more than once we sign the agreement to take possession, that we are responsible.

Q Isn't it a fact it only applies to equipment, the condition that you receive the equipment in, and when you return it to the steamship company as to damages to the equipment?

A Generally, I would say that is true.

* * * *

[99] Q Did you ever talk to anyone at U.S. Lines and tell them you were stripping these containers at your facility?

A No.

Q So basically U.S. Lines had no knowledge?

A It was none of their concern what Houff did with the containers once they signed the papers and pulled them away from the docks. It was 100 percent the responsibility of Houff if he got involved in an accident; as soon as it got off the pier, it is Houff's responsibility and I did discuss that with U.S. Lines and brought up that very subject with them. We were talking about Baltimore. I said, "if we run this truck, this container, in Chesapeake Bay you could say that is your baby," and they agreed that is right.

I said, "well, once I sign for it, it is mine. What happens from then on, I am responsible."

Q You are responsible for the delivery of the cargo?

A That is right, and responsible for delivery of the cargo.

Q In most cases on a solicitation of business, did you solicit U.S. Lines or did they solicit you to do this type of work in the delivery of the cargo?

[100] A We solicited U.S. Lines, but the biggest solicitation comes from the consignees who are the receivers of this freight. They are people who specify as to how the containers are to move and how they want it moved.

Q They told you they wanted these containers stripped and put in your truck and taken out of the containers?

A Said whichever was most feasible for us, that was the way they wanted it handled.

Q Isn't it a fact you have done this on your own, really?
A No.
Q You were directed by the shipper to do this?
A That is right.
Q In all cases?
A Not in all cases.
Q Well, how often?
A I would say, in a majority of cases.

* * * *

[101] EDWARD G. BOCHERT

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[102] Q Does associated have a contractual relationship with the International Longshoremen's Association?
A No, sir.
Q Now, do the majority of your interstate shipments involve long or short hauls?
A In Associated's case, long hauls.
[103] Q What is average distanct per shipment?
A In our case, 450 miles average haul.
Q Could you speak louder.
A Four hundred and fifty-two miles is our average haul from the Virginia Beach terminal.
Q What are distances of the Associated terminal from the nearby port area?
A Well, Associated Virginia Beach would be approximately 78 miles from Maritime terminal located in Norfolk. About the same distance from Hampert's Point's docks located in Norfolk. Eighty-nine miles from the Portsmouth marine terminals in Portsmouth and 20 to 25 from the C&O piers in Newport News, Virginia.

Q Now will you describe the procedures that you utilize after you have been delegated as the transport carrier to pick up equipment at the pier area?
A We obtain from either a broker within the city, or within the Hampton Roads area, or from out of state, a driver reordered bill of lading. This bill of lading and delivery order, we—it indicates to us that we have been specified as motor carrier to transport these particular goods.

* * * *

[104] Upon obtaining that information from the pier office or the steamship line involved, if we are instructed the goods are ready for pickup, we then dispatch a local driver with one of our local tractors to the pier area with the delivery order and he, in turn, reports to steamship lines office and says, I am such and such with Associated. I am here to pick this cargo up.

He is then instructed by people there of the proximity of where the containers in this case would be on the premises, and, in turn, he takes off and finds the container. Upon doing that, he takes it through steamship lines' check out line where the container is inspected for DOT and ICC compliance, that is the tires are checked. Once this is accomplished, he is then given a pass to exit premises of terminal to get out by presenting the pass to the guard at the gate. The guard knows he is there to pick up this piece of equipment.

Q Is the inspection process that you described under the auspices of an equipment interchange agreement?
A Yes, it is.
Q And who is the equipment interchange agreement between?
A Between Associated Transport and the ship line.
[105] MR. ROSENSTEIN: I am showing the witness a straight form bill of lading and the equipment interchange agreement which has been spoken of during this proceeding.

I refer you to the bill of lading and ask you whether or not that is a typical type of bill of lading that a motor transport carrier would utilize upon going to the pier area?

THE WITNESS: Yes, it is.

BY MR. ROSENSTEIN:

Q And I direct your attention to Section 2(a) on the other side.

I ask you whether there is any restriction in that section which precludes the motor transport carrier on the mode of his transportation of the equipment and the cargo therein?

A No, sir. It strictly reads no carrier is bound to transport said property by any particular schedule, train, vehicle or vessel, other than reasonable dispatch.

MR. ROSENSTEIN: I move to introduce, Your Honor.

* * * *

[108] Q Directing your attention to September 24, 1974, I ask you if you picked up any containers at the pier area?

A Yes, I did.

Q Would you tell me where you picked up containers?

A I picked up September 24th, at Norfolk International Terminal, Maritime Terminal, eight U.S. Lines' containers.

Q Now of the classification that you just described, L.C.L., L.T.L., consolidated container loads and full shipper's loads, what type of loads were contained within those eight containers?

A They were all full shipper's loads.

Q When you picked up those full shipper's loads did you pick up the container intact?

A Yes, I did.

Q The contents of the container were not stripped at the pier?

A No.

Q All right. Tell me what you did from the point [109] that you picked up those containers at the pier area?

A Well, they were all brought back to the terminal at Virginia Beach. Five of these containers were destined to one particular consignee in North Carolina. At Associated we had our own empty equipment on our yard.

Of those five, three were of 20-foot size. All right. Upon reviewing the bills of lading and whatever, I just determined that we—it was feasible for us to unload two 20-foot containers, they were to my knowledge cartons of velvet, and combine the two 20-foot containers into one of our 45-foot trailers.

The other 20-footer was also stripped and put into one of our 40-foot trailers whereas we added our own freight to it headed in same direction as the shipment in nose of the trailer of the container. There was some 40-foot containers that we determined the same thing, same type of material that I unloaded two 40-foot U.S. Lines' containers and put them into one of our trailers.

And to me and my company, this was a savings of many dollars. We are talking about eight pieces of equipment, and I put these loads into five of Associated's equipment I had available on the yard not doing anything but sitting around. We saved many dollars in line haul, diesel fuel, just the economics to it was there. I mean why take on this rented equipment when I had my own sitting around?

[110] Q Could you describe, or do you recall, any other reasons that you may determine?

A Yes. I had one in particular that was as we described overloaded. That is the axle weights did not conform to Virginia highways but Carolina highways, the axle were over gross as we should expect of them. Now the allowable poundage, say, would be 33,000 and one of them had like 37,000 pounds on it; they strip for that reason. We distributed the load within the trailer to conform to DOTICC and State Highway Rule and Regulations.

Q What are physical conditions of containers that you picked up from U.S. Lines at the pier yard?

A Well, to my knowledge and my opinion, steamship container tires are very poor quality. For whatever reason the bogeys or chassis, as they call them, sit dormant at the piers for these containers coming in from overseas, and of course, they are out in weather and dry rot and whatever have you and lights, as I stated we do go through

check out lines to determine this, but there again this is a costly item to us when we have a man sitting down there doing nothing.

But my experience with U.S. Lines—and firsthand I can say we pop more of their tires for some reason or another, and of course, this is another expence to Associated because containers are our responsibility while in our possession and Associated Transport has lost many a tire on the U.S. Lines.

[111] Q Now is there anything or any restrictions in the bill of lading or delivery order which prohibits the rearranging or stripping of containers?

A No, sir.

Q Is there any restrictions in the equipment interchange agreement between steamship line and motor transport carrier that prevents rearranging or stripping of containers?

A No.

Q In the case of the eight containers that you have described did the consignee beneficial owner require you not to strip containers?

A No, sir.

Q Is there any way in which a consignee beneficial owner could request a container not to be stripped?

A Yes.

If a consignee ordered exclusive use of vehicles requested, that would tell us, of course, that this container would appear at his premises with the goods intact and we would not, of course, be permitted to strip it; and, in turn, the owner or the buyer, whoever receives the goods, does pay a premium rate for these services.

Q Did any of the eight containers which you have described have on the delivery order or bill of lading exclusive use of equipment requested?

[112] A No, sir.

Q Directing your attention to October 5, 1974, tell me if anything unusual happened on that day?

A Yes. That was a Saturday. I received a call from a Lowell Willis, who is my supervisor with the weekend duty. Mr. Willis called me to advise me two gentlemen had identified themselves as being from U.S. Lines that

appeared on our yard early that morning, 7:00 or 7:30. I asked Mr. Willis did he authorize the men on my yard, and he said he had not.

As I said, he stated to me he was on a telephone call with our people in central dispatching, Burlington, North Carolina, and was not aware that they were on the yard until they came up on the dock yard and requested that they would like to inspect three U.S. Lines' containers that were backed into my platform. Well, Mr. Willis said there they were within eyesight—apparently they loaded them. After talking to Mr. Willis, I proceeded to the terminal. Upon arriving there, I went in my office and I called Mr. Queen.

Mr. Queen's title—I don't know what his title is with U.S. Lines but he is the equipment representative or something, whatever.

I asked Mr. Queen what were two people with U.S. Lines doing on my yard—inspecting my yard for the containers that were on the yard also. He stated he was one of the gentlemen [113] and a Mr. Merrit with I.L.A. was another one. And that he was just checking on his trailers down there on my yard. I asked Mr. Queen did he know he was trespassing on my property.

He came back to me with the comment that if you strip that container at your platform it will cost you $1,000. I told Mr. Queen, I had no intention of stripping containers; which whether or not I did or not was unimportant. But Mr. Queen went on to tell me he was sorry the way things were, he was in the middle, he didn't want to argue with me and so ended our conversation.

MR. ROSENSTEIN: Your Honor, I am going to show the witness some correspondence, letters which review the violations, as we did in the previous case.

BY MR. ROSENSTEIN:

Q Directing your attention to a letter dated October 11th, Petitioner Exhibit 21, can you identify that?

A Yes, I can.

Q Very briefly, what is it?

A It is a letter from F. W. Babb, who is port manager with U.S. Lines, advising Associated Transport Virginia

Beach, the U.S. Lines had been advised by I.L.A. that the containers listed on the second sheet were stripped at my facility in Virginia Beach.

Q All right. Now, in sequence, I direct your attention to October 31, 1974, and ask you if you attended a [114] meeting at the offices of the Hampton Roads Shipping Association?

A Yes, I did.

Q Who was present to the best of your recollection at that meeting?

A Well, of course, Mr. Billups with I.L.A., Mr. Merrit was there, Mr. Mace, Mr. Babb, myself, and Mr. Romeo, a salesman with Associated Transport.

Q What was discussed at that meeting with relationship to Associated Transport?

A Well, Mr. Billups presented his case to Mr. Mace and other gentlemen, that they had evidence we had stripped these eight containers on my yard, and in so doing, he stated times and dates, as I recall them maybe two or three times a day when my yard was monitored, these containers monitored from the time they leave the pier. And Mr. Billups concluded these containers never did leave the premises of Associated Transport and so they were stripped on my terminal, right at my terminal.

I was asked to speak up on Associated Transport's behalf. To bring with me any type of record or dispatch records that I could show proving I had actually run these containers with the cargo in them over-the-road to destination. My only statement that I could make was that I had to support the June 7th letter from the Tidewater Motor Carriers to Hampton Roads [115] Shipping Association.

Q I am showing you what had been introduced into evidence as Petitioner Exhibit 7. I ask you if that is the June 7th letter?

A Yes.

Q And that is a letter from the motor transport carrier to Hampton Roads Shipping Association?

A Yes, it is.

Q And Associated is a member of Tidewater Motor Transport Carrier?

A That is correct.

Q Now if you would refer to the letter dated November 8, 1974.

I ask you if you can identify that letter?

A Yes, I can.

Q Mr. Babb again writing to Mr. Elder with U.S. Lines in New York "whereas the Hampton Roads U.S. Lines has been levied a fine of $8,000, now looking for you to replenish the $8,000 pay," this $8,000 they had to pay the I.L.A.

I direct your attention to January 3, 1975 letter and ask you if you can identify that?

A Yes, I contact, this is from Mr. Babb to Associated Transport at Virginia Beach advising you that he had not heard any response to the first letter for the $8,000 fine that was imposed by the I.L.A. on U.S. Lines and looking [116] for Associated to pay this $8,000 fine.

Q All right.

I direct your attention to the February 14, 1975, letter and ask you to identify that?

A Yes. This was the final letter from Babb to Associated Transport at Virginia Beach in consideration of not receiving any reply to our letter of February 5, 1975, "under the same subject we must discontinue interchange of equipment with you until the cite involved is settled. Signed, F. W. Babb, Ports Manager."

* * * *

[117] This was on a load going to North Carolina, a full container load so, in turn, I called the broker that issued it to me. And I instructed him I did not have an interchange agreement with U.S. Lines any more. They refused to let me [118] have the containers. He would have to get another carrier that had an agreement to move his freight.

Q Is it U.S. Lines that selects Associated to be the motor transport carrier, or is it a shipper or a broker that does so?

A It is not U.S. Lines to my knowledge. It is the shipper or a broker.

Q Directing your attention to February 28, 1975, I ask you whether you had any unusual event occurring on that date?

A Yes. Mr. Bryant, who is the assistant manager for Associated Transport in Virginia Beach received a call from J. P. Stevens in New York City requesting us to pick up two U.S. Lines' empty pieces of equipment here to take to North Carolina, one of the plants in North Carolina, to be loaded there by J. P. Stevens for export for Norfolk.

Mr. Bryant took the call. He took the booking number.

He called Mr. Edwards down with U.S. Lines and asked Mr. Edwards, "is this a good booking number?"

Mr. Edwards said, "I will call you back. I have to call New York."

Mr. Edwards probably called U.S. Lines in New York. And the outcome was that we did not haul these containers. We got a call back grom Mr. Quigley, I believe, and said, "forget it,—that after Mr. Edwards had called Mr. Bryant, excuse me, and [119] said, "you don't have a contract with us any more," and so Mr. Bryant, in turn, had to call Mr. Quigley with J. P. Stevens and inform him we could not be the carrier.

Q Consequent to February 14, 1975, your equipment interchange agreement has been cancelled; is that correct?

A Yes.

* * * *

[121] Q Is one of the reasons you mention the stripping of containers that your facility—you mention per diem rates—would you elaborate on what you mean by a per diem rate?

A Yes, this is the charge that we pay the steamship line for the rental fee, I should call it, while this container is in our possession. Of course, I stated to you earlier that our average length of haul being 450 miles, we are always in a hurry to turn these pieces of equipment around. Get it to where it is going and turn it back in.

In our lenght of haul we—Associated is averaging $80 per container per diem charges that we handle in our

system. In other words, I pick up a container going from here to Michigan, say. I have a load on that container going to that place, but when it gets to that place, they don't have a load for Norfolk. They have a load for West Virginia, and they send the container to West Virginia. West Virginia does not have a load for Norfolk. They send it to Baltimore. This type thing.

The days mount up; the per diem charges, of course, mount up. And like I said, the charges incurred, I think, are excessively high; for one, the cost to our company per container is $80, and I should go on record that we are very strict with our containers, and we don't ignore them. We [122] could turn them around as fast as possible.

When you talk about a company as big as we are, the long haul type carrier, it is an added expense, in other words. You only generate so much revenue from the load, you have to pay the driver and fuel. These charges are excessive over and above your normal everyday charges, and it is hard for a common carrier, such as Associated, to make any type of marginal profit off a container load of freight because of the charges.

Q When you talk about a shipper, are you referring to the container being leased from U.S. Lines?

A Yes.

Q And, therefore, you would be paying those per diem charges to U.S. Lines?

A That is correct.

Q In the eight containers that you discussed today, you had to pay a per diem charge for each of those containers?

A That is correct.

Q And the quicker, therefore, that you turn over the containers and get it back to U.S. Lines the lower your expenses on that particular container?

A That is correct. Right.

THE COURT: Nothing else.

CROSS-EXAMINATION

[123] BY MR. LAMBOS:

Q Mr. Bochert, picking up—U.S. Lines' containers is not the only business of Associated Transport in this area?

A No, sir.

Q In fact, you do a lot of domestic work, that is, picking up non-foreign cargo?

A Correct.

Q And the 11 checkers that you have down at the facility in Virginia Beach do a lot of that consultation work; don't they?

A Correct.

Q You told us the drivers were members of the Teamsters Union—are these 11 freight handlers members of any union?

A Teamsters also.

Q Has the I.L.A. ever sought to organize these 11 men?

A Not to my knowledge, I don't know.

Q Has the I.L.A. ever made a demand that you sign a contract to represent these 11 men?

A No.

Q Mr. Bochert, I would suppose that Associated also picks up cargo from so-called break-bulk or non-container shipments; do you not?

[124] A No.

Q You mean, you never had occasion to send a truck down to pick up cargo from—

A I missed that.

Q A break-bulk container type?

A No, I have not. That I know of—I will put it that way.

Q Do you know, of our own knowledge, whether other companies in the area pick up cargo of that type?

A You are saying a steamship line?

Q I would say, for example, a thin line ship might come in. They have some containers and also some cargo in pallets?

A Correct.

Q Has a trucker—excuse me—has a broker ever requested Associated Transport to pick up such cargo?

A Yes.

Q Hav you gone down to the pier with your own truck?

A Yes.

Q And the I.L.A. has actually loaded that cargo on your truck; has it not?

A Correct.

Q And to your knowledge that was the type of ships we had here in Hampton Roads for years and years and [125] years before container ships came?

A I can't speak for that, I will be honest with you.

Q You have no knowledge?

A That's right.

Q In the break-bulk activity the part, I take it, is performed by deep sea I.L.A. laborers who put the cargo into your truck?

A Yes.

Q I take it, too, if you were going to use one of your own containers because you didn't like the U.S. Lines' equipment, and you found it too decrepit and were popping tires on it all the time, that you could just as easily move one of your own containers down to the pier and have the I.L.A. deep sea labor move the cargo from the U.S. Lines' containers right into your own containers?

A Well, in that case, you are talking about added expense to a shipper or consignee. In other words, if I handle it, that is me. I generate so much revenue from the containers, which I spend all my money handling if I lose money. You are asking me to take my empty trailers down there let them load it—and these fat I.L.A. get paid—would be added expense to a shipper or consignee.

* * * *

[126] If I said to a consignee I want to take my empty trailers down there, instead of me handling it with my own labor I want to take it down to the pier and let the I.L.A. labor handle it. This consignee will say to me, "to heck with you that is a cost to me, you handle it because you are only getting X number of dollars for the containers anyway from me." I would get that, then the I.L.A. labor would be an excess handling charge so I

would not do that as a trucker. I would not encourage that because the consignee could divert from me to somebody else, another carrier.

* * * *

[128] Q And one of these others have been cancelled to your knowledge?

A That is correct.

Q Have you had any complaints from any of these others?

A No.

Q Have any of these others told you that you were not to strip their containers at your facility?

A No.

* * * *

CROSS EXAMINATION

Q Mr. Bochert, on your interchange agreements [129] where you haul containers for U.S. Lines, how do you get paid for the trucking; who pays you?

A It is so specified on the bill of lading who is responsible for charges, either ship collect, prepaid by such and such, this way.

Q Does in most cases U.S. Lines pay you; you bill U.S. Lines?

A Talking about per diem charges?

Q Talking about the revenue for hauling the containers?

A No, sir, they are not involved in that to my knowledge, the revenue. It is between the consignee, the shipper or a third party, possibly, other than U.S. Lines.

* * * *

[130] Q Did U.S. ever know you were stripping?

A I didn't hide it. To be honest, no.

Q Did you ever talk to them about stripping the containers because of the type of the equipment they were turning over to you?

A No, I don't believe so.

Q Basically wasn't it an agreement between really with you and U.S. Lines, they thought you were going to deliver that cargo intact in those containers to the ultimate consignee?

A Where does U.S. lines come in? After I sign the lease that cargo belongs to me.

Q But this was the intention; wasn't it?

A I could not say. I will be honest. If they expected me to do this, I do not know. I don't think they did because I don't think they are involved.

* * * *

[131] A. S. McNEILL

was called as a witness on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[136] We felt there is no control at all on the motor carrier, and this has always been defined by the Federal Maritime and Interstate Commerce Commission that once the container is turned over to a motor carrier at a pier facility any further jurisdiction is under the Interstate Commerce Commission. Federal Maritime nor the steamship line had any control over it.

* * * *

[137] Q I direct your attention to the 11/8/74 letter. I ask you if you can identify that?

A This is a letter from U.S. Lines addressed to Pilot Freight Carrier, also, advising them of the violation of the contract which they held with the I.L.A. And they advised them that through a committee of the Maritime Association that they were imposing a fine of $1,000 against Pilot Freight Carrier and asked for remittance of the same.

Q I direct your attention to the February 5, 1975 letter and ask you if you can identify that?

A A letter from U. S. Lines addressed to Thurston Motor Line, Inc., advising of a violation of a stripping cargo and also asking for a $1,000 reimbursement charge.

Q And was this container a full shipper's load which was picked up at the pier by Thurston Motor Line, brought back to its facility and stripped, placed on one of

[138] its own pieces of equipment, as it was destined to a point more than 50 miles down the port area?

A Yes.

Q I direct your attention to the February 14, 1975 document. I ask you if you can identify that?

A This is a letter from U. S. Lines, Inc., Mr. Wilson Babb, port manager to Pilot Freight Carrier advising them they must discontinue interchange of the equipment until the situation was resolved.

Q Now, did Thurston Motor Line also receive a similar letter cancelling their equipment interchange agreement?

A Well, the original letter stated that fact. I am not sure if they had an additional letter or not. They were no longer able to interchange the equipment to my knowledge.

Q Now, did Thurston and Pilot have an equipment interchange agreement similar to the one that Mr. Bochert decribed in his testimony?

A Yes, they did.

Q This was the type of agreement that was cancelled?

A Yes.

Q In the bill of lading is there any restriction whatsoever which precludes the motor transport carrier once he [139] takes possession of that equipment of rearranging or stripping?

A There is none.

Q Is there any restriction in the delivery order which would preclude the motor transport carrier from rearranging or stripping a full shipper's load?

A No.

Q Is there any restriction in the equipment interchange and agreement which precludes a motor transport carrier from shipping or rearranging the loads?

A No.

* * * *

[140] Q Was Tidewater Motor Truck Association a party to the agreement between the I.L.A. and H.R.S.A. in negotiating of the 30-day warehousing exception?

A No, they were not.

Q Was, however, a warehouse such as D.D. Jones specifically affected by the results of this negotiation?

A Very definitely.

Q Now, the 30-day warehousing clause was negotiated in 1973; is that correct?

A Yes.

[141] Q And remained in effect until April 28th of 1975?

A Right.

Q All Right.

How did the operation of D.D. Jones and other public warehouses change when the rules on containers were suspended on April 28, 1975?

A Well, during that time we had many inquiries from accounts which we were working with as to the implication of that move.

In some cases we had a diversion of traffic away from the area, away from the state of Virginia, which resulted in a loss of traffic and business which we would handle normally.

We also had a lot of inquiries about the additional cost which customers would inquire as a result of that. In one case one of the major shippers stated the cost would amount to approximately $400 additional per container if it happened to be stripped at the pier and then to the warehouse and to their own trailer and so forth.

Q Was there a period of delay now as a result?

A Yes. It would cause delays anywhere from, I will say five to eight days, and also would incur much additional pilferage and so forth to the goods.

Q What happened specifically with the goods once they were taken off the ship by deep sea I.L.A. labor during the suspension of the rules on containers?

[142] A Well, as I say, often the goods were diverted to other areas, but those that still moved within the area and to our facility we had to pick up with our own trailers from the the pier and move them to our warehouse.

Q When you picked up at the pier area was the goods already stripped by deep sea I.L.A. labor?

A In many cases it was. In others we would attempt to pick it up and it had not been stripped.

Q How would that cargo be handled specifically when the 30-day warehousing clause was in effect? What were the differences, specifically?

A Well, the difference was we could send a tractor only to the pier facility and hookup to a container and interchange it through the steamship facility and move it directly to the warehouse, in this area 30 to 40 minutes, whereas if it was stripped you would have to send your own equipment at added expense and possibly the shipper would incur as I say maybe three- to five- to eight-day delay in the movement of the cargo.

Q Who was allowed to strip the cargo after it had been picked up during the period when the 30-day warehousing clause was in effect?

A Well, the facility within the 50 miles could strip it if it was supposedly solid loads or shipper's loads or manufacturer labels.

[143] Q Would your employees, if the goods were to stay in a warehouse for 30 days, strip that type of cargo?

A Yes, we would.

Q Not stripped by I.L.A.?

A No, it was not.

Q Did there come a time when the rules on containers were then reinstated?

A Yes.

Q And when was that?

A Approximately 30 days later.

Q May 30, 1975?

A Yes.

Q And then did the operations go back to the way it was prior to April 28?

A Yes, it did.

Q All right.

Now, have you been able to determine what, if any, business D.D. Jones lost as a result of the suspension of the rules?

A It is really hard to determine exactly how much business you have lost, because a lot of it you would get

normally you never hear of because this word is passed through the brokers in the area and they will advise the shipper at the time they offer you freight of these restrictions so the shipper don't tender the cargo.

[144] In other cases, we have large movements from the warehouse because we get advance notice on what is destined to our facility and we know the shipments were diverted to areas outside the Virginia limits which cause you to lose the revenue and so forth, and also is added expense to the shipper in those particular cases.

Q Mr. McNeill, under the 30-day clause in warehousing operations in 1973, were your employees stripping those containers when they got to the warehouse?

A Yes.

Q This was the mode of operation that continued up until the suspension of all rules April 28, 1975?

A Yes, that is true.

Q Nothing further.

THE COURT: Any cross-examination, gentlemen?

CROSS-EXAMINATION

BY MR. LAMBOS:

Q Mr. McNeill, have you been active in your Tidewater Association for some years?

A Yes, I have.

Q And isn't it a fact since 1969, internally among the various officers and members of Tidewater the CONASA-I.L.A. rule on containers has been the subject of much discussion?

A Yes, they have been discussed.

[145] Q And isn't it also a fact that to the extent possible you have kept your members advised of the contents of the rules?

A The members have been advised and they discussed it, but I have always had the attitude they don't apply to motor carriers.

Q And I think the I.L.A. and CONASA would take the same position. But it is a question of knowledge, the rules on containers are fairly well known in the trucking industry; are they not?

A The rules pertaining to movements within the 50-miles area were more widely published and known and discussed than were those outside 50. Those only came to our knowledge since the meeting was called.

Q So if it was something within 50 miles, everyone pretty well knew that containers had to be stuffed or stripped by I.L.A. labor; was that not right?

A Only if the destination was within 50 miles.

Q Within 50?

A Right.

Q Now, if the destination of that container was outside the 50 miles all of your members felt that container would move freely—that container could move otuside the 50 miles freely?

A Well, it could if they so chose to do so but [146] also has the prerogative of transferring the cargo if they could to reduce expenses or for safety.

Q Isn't it true a container that comes to a trucker's yard and is stripped can't possibly or physically move outside the 50-mile limit?

A Well, there is no need for it to move outside until they so choose to move it by that method.

Q But the point is, that container never moves outside the 50-mile limit, that container is returned back to the steamship carrier after its contents are removed by the trucking company; is that not correct?

A In a few cases. I am not saying that carriers do not move containers. The dispatch by motor carrier almost daily occurred between his operation here and other outlying terminals and so forth. It might to be to his advantage to move a container to Richmond or Raleigh and return it if he can do it in two days. But he may have a load or his own equipment. He might have two containers he could load into one to reduce the expenses.

Q Has not D.D. Jones had experience with the rules of containers going back to 1969, and what they meant?

A Yes.

Q And hadn't D.D. Jones known as a matter of meeting between I.L.A. and Hampton Roads Shipping Association that where a container was to be stuffed or stripped by anyone [147] other than the shipper or

consignee's own employees within the 50-miles area, up to the Dublin Rules of January 1973, that work was to be performed by I.L.A. labor?

A We have been aware of the contingents of the steamship and I.L.A., but we never agreed they were binding upon us as warehouse facility or as a motor carrier.

Q I am only talking about knowledge and certainly it is not contingents that are binding upon you. Would you say however they were binding upon U. S. Lines?

A Well, I would say they were binding according to their agreement with the I.L.A. but not upon the—

Q And binding upon the I.L.A. as to permitting containers to move outside the 50-miles area as well; are they not?

A I don't think they legally can be bound by I.L.A. We have interpreted it to be under the jurisdiction of the I.C.C. once it leaves a shipper's origin and/or beginning point and not the I.L.A. or steamship industry or no other industry attached to it.

Q Have you people complained to the Interstate Commerce Commission with respect to the cancellation of these interchange agreements by various steamship carriers?

A Yes.

* * * *

[158] MYLES E. BILLUPS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[160] Now, Mr. Billups, I want to know what the traditional jurisdictions of longshoremen was in your time in the past 32 years on the dock before containerization of cargo came. First tell us, please, how longshoremen handle cargo, and what type of cargo it was that arrived at the docks, and by what means and how the dock gang —first, take the instance of loading the ship—I don't know that Judge Merhige has too much along this line and we want to tell him if you can. Can you tell him how this operation is as it comes to the ship?

A Well, the basic, as we call break-bulk and sometimes that confuses people when we say break-bulk.

Q What is that?

A Loading cargo piece by piece, it does not mean that we dump it all in the ship in that manner.

Q Is this by hand?

A That was considered the method that we used prior to containerization. We would take the cargo out of the ship via pallets, trays, some call it. We would put it on the dock. We had fork-lifts, et cetera, to move the cargo into [161] the piers. We unloaded the pallets piece by piece, separated it, sorted it, and made it ready for either shipment out via over the road truck or rail cars.

Q All right.

Now the pallets, at one time did the longshoremen load or discharge what was known in those day as conex boxes?

A Yes.

Q Tell the judge what conex boxes are?

A They were not owned by steamship lines back in the wartime years and later into the Korean war, et cetera. Conex boxes were military boxes that primarily housed some ammunition, some household goods, electronical equipment, that was not to be disposed by regular handling.

Q They were boxes—they were really cargo which had been boxed up, would that be a good description of it?

A Yes, but military conex boxes came primarily already loaded by the government where it came from.

Q Now when cargo came destined for the pier before containerization operation, whose job was it or who had the work jurisdiction of unloading, for instance, say trucks that would bring cargo and unloading trucks of ships' cargo?

A Well, when trucks came down to the piers, they would bring down loads of cargo from over-the-road, all kinds of over-the-road trucks. We would unload the cargo from the truck and place it on the pier for later to be shipped on a [162] ship. It would go, as we call it break-bulk, practically 100 percent up until say around 1965 or 1966, we started to get new containers to run through

the port. But we started to with the piece-by-piece and box-by-box method of handling—we used to have as many sometimes as five gangs of longshoremen at 22 men per gang. Those five gangs of men would average on a good ship with good handling equipment, might average 30 ton an hour which would mean the five gang total with a 110 men on the ship would average out about 150 ton an hour or as to going with the break-bulk method. Then containerization came in.

Q Do you have a small model here you could show the judge of a truck with two containers on it?

A Yes. That is what is considered a container. It has with it the piece of equipment that is pulling that tray is called a fifth wheel. We have some machines that we use on the pier that is called hustlers, but they primarily have the same function. The only thing with the hustler is that it has automatic equipment that lifts the container up so you don't have to be winding the wheel on the tractor.

Q There are two containers in the model there?

A That is a simulation of two 20-foot containers on one flat as we call it.

Q Either one of them can be lifted off or put on; is that correct?

[163] A Either one of them can he lifted off individually. We have a crane now down at N.I.T. that could take both of those containers off simultaneously with one lift.

Q All right.

These are metal containers, the 20-foot containers and 40-foot containers in the tray; is that correct?

A Yes.

Q These containers contain cargo if they are destined to go overseas which are brought to the piers either by truck or by rail car; is that correct, sir?

A Yes.

Q And then the work jurisdiction of the longshoremen is that they pick up these containers and they are placed aboard the ship; is that correct?

A Yes.

Q Well, then would you say that the container method now is an extension of the work jurisdiction which you formally did by hand with break-bulk except that the break-bulk is now put into a sealed container; is that correct?

A Well, the containers is a new method of loading and unloading ships and it has increased productivity more than 100 percent. Because as I outlined a few moments ago, whereby we had at sometimes five gangs on the ship averaging 30 tons an hour and an employer at that point in time thought he was doing good with 30 ton per gang of 22 men. We can now [164] with the container handling method, with a crane, one crane, and a 20-man gang load as high as 600 tons per hour, which more than doubles what five gangs were doing with the old method. So that caused us to lose men, whereby we had 110 men on a ship now we have a container ship with one gang of men on it, 20 containers. Whereby it used to take you almost a week to do 3,000 ton, now we can load 3,000 ton in about six to seven hours.

Q Now the containers were used for ships that were built to carry them, first I believe in New York City; is that right, around the early 1960's as you recall now?

A Yes.

Q Now, speaking of Hampton Roads. When were containers first beginning to come in as a part of your work in any number. Was—approximately what year if you recall?

A Well, as I outlined, containers started to move here in very small quantity around 1966 and 1967. There may have been one or two on the decks of general cargo ships in '65. When we were negotiating our contract prior to the 1967 contract and employers—the chairman of the employers' committee told us that because we were attempting to get guaranteed annual income imposed in our contract and we were—we thought that we would be ready to give a few men out of the gang in order to pick up this guaranteed annual income—and employers stated they didn't want to cut the gangs down [165] because we didn't have containers here and they would never see a full containers' ship dock in the port of Hampton Roads.

Q Now getting back to your own personal experience, did you serve on the negotiating team for the negotiating team of the local contract with the employers and if so, what was your earliest date or year that you can recall that you served in the negotiating item I.L.A. team?

A I served on every negotiating committee for the port of Hampton Roads since 1955.

Q Now, this is for negotiation of contract every third year or every fourth year whichever it happend to be, that is correct; is it not?

A Right.

Q When the containers came in, did the, as you mentioned, did the I.L.A. deem it necessary to have any particular rules concerning this or what were the issues involved that Mr. Lambos has told the court that we gradually get the container rules in the contract? What precipitated this?

A Well, it was a work preservation clause instituted in the New York contract. We had also traditionally and historically the port of Hampton Roads, along with Baltimore, Philadelphia and New York, Providence and Boston were also in a collective bargaining state. We negotiate with the New York Ship Association, primarily, but [166] the outcome of those negotiations also reflected all of the other ports from Boston or Searsport, Maine to Hampton Roads.

Q In other words, you had a national contract for your wages and your hours and certain conditions of work, but there were local rules which you locally negotiated; is that correct?

A Well, we had a national understanding prior to the formulation of the CONASA organization and the International Longshoremen's Association. Then it became a matter for the Atlantic contract that was the inception of the contract.

Q When did the container rules come in, under what contract did the container rules as we now have them in the contract come into existence?

A 1968.

Q 1968. The year in Hampton Roads?

A Yes.

Q Now the 50-mile container rule, which is the subject matter of this controversy here, was that or is that a national rule or is it just a local rule?

A Yes, that is the national contract.

* * * *

[168] Q Now the I.L.A. gets a royalty from which the employers agree to pay for boxes which are not stripped; is that correct, sir?

A Yes. Those boxes that move unrestricted right straight through the term fall without the longshoremen handling it beyond just lifting the boxes off the ship and placing it in the storage area for later to be picked up and carried through, we got $2 a ton for each one of those [169] containers.

Q The purpose of obtaining this was to repay—to repay, at least a loss of jobs, which the containerization resulted in; isn't that correct?

A And it goes beyond that.

All of your fringe benefits, our welfare, our pension, our vacations, our holidays, all—it all—it comes as a result of man-hour work by longshoremen. The contract reflects for each hour a longshoreman works there is a certain amount of money placed into the funds to provide for him a pension and to protect him when he becomes sick or his family and children become sick on the hospitalization policy. The containers has cut the man hours so drastically, because of the containers that are moving straight through—these 20-ton, 30-ton containers going right straight through that we used to handle all of the cargo.

Now everybody is saying, "Well, we have got to let these go through," so we have agreed to allow these to go through and we take the royalty. One of those dollars is going into a fund to protect the welfare and pension moneys that is to be lost as a result of deficient man hours, the man hours going down.

Q So this money then is really compensation for the loss on jobs?

A Jobs and man hours.

[170] Q Man hours that the containerization, the modern way of manufacturing cargo, has resulted in?

A Right.

Q Is that correct?

A That is correct.

Q I would like for you to explain to Judge Merhige how this committee operates that has been mentioned, I.L.A. fines the members that violates the rules. Actually it is the unit committee of the employers and employees that does the fining; isn't that correct?

A Well, the agreement was set up for flagrant violators of the principles that were outlined in the contract at that time the I.L.A. had waived its right to strip all containers and handle all of the cargo piece by piece. These containers that we had permitted to move to the beneficial owner outside of the 50-mile radius or inside the 50-mile radius, if he were the beneficial owner we would get the royalty money on. So we had to put a container inspector on to be sure, and he was checking the interchanges and the bill of ladings where these containers were destined to, and we just watch to see.

Q Give us an example that your inspector finds that a box is being stripped against the rules. Tell us what happens then?

A Well, the container inspector is notified. We [171] get a report on every container that moves through this port, through the shipper or agents. They send us a report of the containers that are moving. The container inspector checks the piers in the morning for containers moving out of the area. The employers cooperate and they notify the container inspectors that they are releasing some boxes to a certain trucker who—and these boxes are moving on a straight through bill of lading on a shipper's load bill of lading. And that is going outside a 50-mile radius.

Q What is shipper's load?

A A full container with one consignee or beneficial owner's cargo in the box.

Q All right.

A The container inspector is notified of the destination of these containers, that the container may be going to Kansas City, some of them may be going to South Carolina; but they are all destinations. He knows where the containers are supposed to be going.

And then he monitors, as we were talking about, he monitors the area. If Associates containers, if U.S. Lines

has released a container to Associates the container inspector may drive by Associates installation to see if the containers are gone; if they are gone, no problem. If he sees the container on the Associates lot for more than a day then he will continue to patrol the area to see when the containers [172] move on to Kansas City or the destination that the bill of lading says they are supposed to do. Then sometimes if—he may—if the containers are still sitting there for a period of time get a little suspicious maybe the containers are not going to move. Then he may come back at night, maybe 9:00 or 10 o'clock at night, and he may see a container backed up to the platform.

Well, if the container is moving straight to Kansas City there is no reason for it to be backed up to the platform. And then that is when he becomes alarmed and he checks it out, and keeps a monitor of the time schedule that he is seeing the containers, and the condition they were, and where they were on the lot, and what have you, and he does not have to go on the lot. Doesn't go on the property. He just continues to peruse it until he takes the times and what have you of all of the containers, and what happened to them.

Q All right. If he sees there is a violation, for instance, the cargo is now being removed from the container and even so much as stored in the warehouse of Associates, you gave us the example of Associates, then he makes a report of the violation to whom?

A Makes the report first to the International Vice President, that is me.

Q All right?

Q And then he makes a report to the employer, the [173] steamship line that is his boss.

Q For instance, U.S. Lines as an example?

A Notifies Mr. Mays, who is the Executive Secretary of the Hampton Roads Shipping Association. And then they are placed on notice that we are going to write a letter protesting these containers being in violation.

Q You make your charge. Then who hears whether that is true or not?

A Then we request a container grievance committee meeting. That comprises the representatives of the Hampton Roads Shipping Association and representatives of the I.L.A., and we meet primarily at the shipping association's headquarters.

Q Also U.S. Lines?

A Well, U.S. Lines, if the U.S. Lines containers are in question or the ones that are in violation. U.S. Lines is notified that its eight containers, four containers, whatever, are in dispute and the numbers and the dates and what have you, and U.S. Lines normally will come to the hearing with whatever information it has concerning these containers.

Q All right.

Then the committee decides whether or not this particular container had been handled against and in violation of the joint container rules; is that correct?

[174] A If the evidence supports that the container that was supposed to move on a shipper's load, as we call it, directly outside of the 50-mile radius to a beneficial owner or a manufacturer on a manufacturer's label that the container was not sent to the destination as the bill of lading said that it was going to be sent. In fact, then it became a violation if the container was stripped by anybody other than the beneficial owner that the bill of lading said or the manufacturer. It was determined a violation.

If the container inspectors could prove that these containers were stripped at the truckers' headquarters and loaded into his own equipment or something else done with it, then the committee in itself, after listening to all the testimony, just like a court hearing, would make a decision. And it would decide jointly whether or not it was a violation or it was not a violation.

Q So the joint committee of the Shipping Association I.L.A. makes a decision and levies a fine on the particular shipowner; is that correct?

A Or the penalty.

Q Mr. Billups, going first to the original negotiations for the container rule, during the entire negotiations for the container rule and even from that date until the present day, was any discussion had between the I.L.A. and the Shipping Association as to whether or not these

[175] truckers, the railroad organization, or anybody else that handled these containers, whether or not they had any right to interfere with the shipowners' property, which is the container, or there was any permission given them so far as they are concerned, to violate your work jurisdiction. Any mention at all made of any third party in this?

A We weren't concerned with the truckers. We weren't concerned with anybody other than those that we had a contract with. The Shipping Association entered into a contract with us. We had waived certain very dear privileges of handling all of the cargo, because of economic reasons, we had agreed to permit the cargo to move with one consignee outside the geographical area without us handling the cargo at all. And it wasn't our responsibility to go after the truckers or anybody else. We also went after the shipping line who had said at that time if he had the containers and the containers were moving on a single bill of lading that he would see to it, his responsibility, to see to it that the container was properly documented and that it would go to its ultimate destination as the agreement prescribed.

Q In other words, the shipowner took the position that this box was his property and he could control it until it got to where it was going, and he agreed to do this with your contract; isn't that correct?

A The steamship line had reserved the right [176] whether to release the box to a trucker or a consolidator or anybody else, if these rules were in effect. He would decide whether or not he would release it. We had had many cases where the shipper knew that the box was going to be used in violation of the contract and they would not release the box. They would call us and ask us if they could send a box to a consolidator, a consolidator had cargo he wanted to load at his station. They would call and find out if they would be in violation. Well, based on the contract the committee would rule it would be a violation and they would not release the box. So they have control of their box.

Q The violation that you all have had of your work rules there, container rules since 19—what is it 1969, have always been those which the shipowner or shipping

agent claimed that he had no knowledge of beforehand, isn't that true?

A That is right.

Q In other words, the shipping agent when he released this box, he, in good faith, believed that the box would not be handled in any way to subject him to a penalty under your contract with him; isn't that right?

A In the U. S. Lines' case with the boxes that Associated stripped, U.S. Lines says, "I can't believe that that is being done."

And Mr. Merritt told Mr. Queen, "well, if you come over [177] here you will see they are being stripped, the boxes are supposed to be gone to Tennessee or somewhere. I don't know the direct destination but they were supposed to be gone, if you come over you will see the trucker is stripping these boxes that is moving on a shipper's load outside a 50-mile area in violation of the contract."

Mr. Queen came over and that is what has already been testified here today and that is when Mr. Merritt went on the property. Never went on the property until Mr. Queen got there because Mr. Queen was the one that had the agreement with the trucker not the I.L.A., so Mr. Queen did the talking. And he went on and they looked and they saw the box had been stripped.

Q So you are convinced from your experience on the container committee and the violation committee that the shipping agencies and the shipowners whom you had a contract with had no prior knowledge of what any of these truckers were going to do to affect the boxes before they did do it; isn't that right?

A They had no knowledge. As far as we know they have always said they didn't know and we believed them.

Q Now did you in any way—did the I.L.A. in any way agree with the shipping association or any of the members, the U. S. Lines or anybody else, to help them try to collect the fines from whoever subjected them to fines. Did you have [178] anything to do with that? I know it is absurd.

A We had a contract with the steamship lines, the lines knew that the boxes had been stripped in violation

of the contract. And they agreed to pay the penalty without a fight with the union. That is where our responsibilities ended. We were finished with it. We had nothing to do with whatever the steamship line wanted to do for getting his money back or whenever he wanted to go after, that was not our business at all.

As far as we were concerned if he never asked to get the money back and as long as he paid what the contract said he should pay, we were satisfied.

Q Right from the beginning, Mr. Billups, did the I.L.A. protest every violation it was possible for them to find out about?

A The I.L.A. rigidly patrolled the container contract in this port. We never gave up on the 30-day warehousing clause—one of the last to give up on the 30-day warehousing clause, and it was the Dublin Rules that forced us to give up on the 30-day warehousing clause. Prior to the Dublin Rules we stripped all full loads, what have you that was not going to the beneficial owner's house or the manufacturer label. Prior to the Dublin Rules there was no 30-day warehousing clause in the port of Hampton Roads.

Q Had the I.L.A. ever made any demands, written [179] any letters, in any indirect or subtle way attempted to take any action against any trucking association that have charged us with this unfair labor charge?

A No, we have always been friendly with the truckers. I know some of the truckers who own the places and I see them and they speak, how are you, Billups, and so on. We never had any quarrel with the truckers at all.

Q There had been no controversy at all then?

A Never.

Q Has there ever been any—in reporting the violation to the shipping association, has there ever been any intent or object on the part of I.L.A. to get any work which the truckers themselves were doing?

A Only thing the I.L.A. had tried to do is to protect the work that we have traditionally done as best that we could. That is all. To try to protect that work that we had traditionally done.

* * * *

[181] Q In fact, you were in New York when we came up with a revision of the container rules in 1968; were you not?

A Yes.

Q Did we have a strike of some 57 days at that time?

A Yes.

Q Do you know what the cause of that was in 1968?

A Well, I think it was containers. Right, offhand I can't put my finger on the direct cause.

Q Do you remember on the Policemen's Holiday at the Sheraton Motor Inn in New York where committees were arguing, fighting, scraping and hollering, with respect to drafts of proposals sale given by the I.L.A. on the one hand and the New York Shipping Association on the other?

A Yes.

Q Now do you remember, also, that the Presidential Board of Inquiry in the city, determined that one of the primary causes of the strike by the U.L.A. in 1968 was the issue of containerization?

A Yes, I remember that.

Q Do you remember back in 1957—

THE COURT: He remembers everything you remember that is funny.

BY MR. LAMBOS:

Q You will remember in '57, when the first [182] Atlantic ship came into New York, in the prior year that one of the big issues that caused a strike of some 50 or more days then were the demands of the I.L.A. with respect to job protection from the impact of containerization; is that not so?

A That's right.

Q Has not the question of containerization been a major subject in the discussions and disagreements between the various shipping association and the I.L.A. from 1957 right up to the present time?

A I am sure that is what it has been.

Q Isn't it also not a fact that after the 1968 negotiations in New York, you came back to Hampton Roads

and agreed almost precisely to the rules arrived at in the New York negotiations for the Hampton Roads area?

A Yes, we did.

Q And is it also not a fact that thereafter these rules were applied in Hampton Roads, in New York, Boston and Philadelphia, and Providence and in all of the North Atlantic ports?

A Yes.

Q Is it also not a fact, Mr. Billups, that from the beginning of the development of these rules that the I.L.A. in Hampton Roads complained not only in Hampton Roads, but also in International Headquarters and at New York Headquarters with respect to the very point which is at issue [183] here, and that is the attempt by truckers to strip containers within the 50-mile limits, where those containers were consigned to points outside the 50-mile limit?

A Truckers and consolidators.

Q Was this not the subject of meetings between the Hampton Roads Shipping Association and the I.L.A. in 1969, 1970, 1971, 1972, 1973, 1974 and 1975.

A Right.

Q And in all of these cases were not determinations made in each of these instances they were violations?

A Right.

Q And were not these joint determinations reached by both the employer and the union representatives?

A Right.

Q And if I were to take you through the minutes of the Hampton Roads Shipping Association grievance committe on containers, and which also indicates various correspondence between the two parties, would this not also indicate that there were many instances where truckers' containers were held to be in violation?

A Right.

* * * *

[185] Q Could you tell us what the uniform determination of the CONASA I.L.A. committee meeting in each of the cases where the subject was discussed was?

A The subject was the preservation of the contract that was negotiated between the two parties and the pur-

pose of the container rules was to preserve the traditional [186] work jurisdiction of the I.L.A.

We had a case before CONASA Committe, as you know, out of Hampton Roads, concerning some 23 or 24 Dart Line containers that were stripped by trucker, not taken to its destination, stripped by trucker, 24 of them and Dart Line paid. Whether Dart Line tried to recuperate or get that money back from somebody else we don't know. We weren't concerned with that. But it was ruled by the Joint CONASA Board that the containers should have gone to destination or the beneficial owner as they were, bill of lading described.

Q This had been the uniform determination in all of these?

A In all of the ports, right.

Q Thank you.

THE COURT: You may cross-examine.

CROSS EXAMINATION

BY MR. ROSENSTEIN:

Q Mr. Billups, you mention in your direct testimony that containerization commenced in 1965 or 1966 in the Hampton Roads area; is that correct?

A Containerization, as we know it now, was born in Hampton Roads around '67 or '68. I thing our first containers crane was erected in '68. Somewhere around '68 or '69.

* * * *

[187] MR. ROSENSTEIN: I move to strike that answer and ask the reporter to read the question because it was not answered.

THE COURT: Well, it is just the last portion of it, [188] I think, is the appropriate one to be stricken. The question was in 1965, there was no container agreement and I take it that it follows that they did not strip them. Isn't that what you meant to say?

THE WITNESS: Yes.

* * * *

Q In 1965 and 1966, when a motor transport carrier went down to the pier area, he picked up a full shipper's load intact; is that correct?

A Well, if he picked it up and it was destined for a beneficial owner, we assumed he carried it to the beneficial owner.

Q I.L.A. labor did not strip a full shipper's load in 1965 and 1966; is that correct?

A Except if we were requested.

Q How were you requested?

A If it was a container—if they wanted it stripped, they would instruct us to strip it.

Q But for containers destined to a beneficial owner or consignee outside the 50-mile radius, I.L.A. labor did not strip those containers at the pier; is that correct?

A That is right.

THE COURT: Was it material at that time whether it [189] was outside the 50-mile radius or not?

THE WITNESS: At that particular time we did not have—we had not realized containers in port of Hampton Roads and we did not have written into our contract the 50-mile radius clause.

THE COURT: It was not material as to where it was going?

THE WITNESS: Right.

THE COURT: You only stripped it if you were asked to strip it?

THE WITNESS: Right, yes.

* * * *

Q Who would request you to strip it?

A The shipping agent or the stevedore. If the stevedore said we have this full container load that we want [190] stripped, we strip it.

Q That would have been at the direction of the consignor or consignee, correct?

A Well, I don't know about the consignee at that time. It would be a direct order from the stevedore—that is who we were working for—the stevedore would instruct us that that box had to be stripped and we stripped it.

* * * *

[199] A The U. S. Lines had two 20-foot containers that were released to McLean Trucking, they were destined to go outside a 5-mile area, and McLean took the two to

his facility and transferred the contents into his own equipment and took them on wherever they were supposed to go and U. S. Lines paid the fine for that?

THE COURT: This was prior to Associated?

THE WITNESS: Yes.

BY MR. ROSENSTEIN:

Q Can you tell me—this you believe was a full shipper's load; is that correct?

A Loads destined to a benficial owner outside a 50-mile area.

Q Was that a full shipper's load?

A Well, we considered it a full shipper's load. It was one piece destined for the beneficial owner on a through move.

Q Isn't it a fact in that case that McLean took that specific—or those containers to its Richmond facility and stripped them there?

A I think we discussed whether they were stripped at Portsmouth or at Richmond. He said he stripped them at Richmond. We said he stripped them at Portsmouth.

Q Do you have any proof they weren't stripped at Richmond?

[200] A Well, in any case, the containers did not go to the assigned consignee that the trucker had discharged the containers and put it in his own rigs and carried it in his own equipment.

Q All right.

Here at Page 69 of the 1974 agreement. On Rule 2, "Containers to be loaded or discharged by I.L.A. labor. All cargo loaded in containers outside the geographic area and on import cargo, all cargo discharged from containers outside geographic area." Isn't the Port of Richmond more than 50 miles away from the port area in Hampton Roads?

A Where are you reading from?

Q Page 69, A export cargo number one and B, import cargo number one.

THE COURT: The question is, isn't the port of Richmond more than 50 miles from the port of Hampton?

THE WITNESS: Yes, the port of Richmond is more than 50-miles from the port of Hampton.

BY MR. ROSENSTEIN:

Q Isn't it a fact from your own contract that you have given up the right of I.L.A. labor to strip containers outside of a 50-mile geographic area of the Hampton Roads port?

A If the container is consigned to a consignee to go to a direct consignee owner through shipper's load, we have [201] been notified under the documentation that the container is moving on a shipper's load. We expect the container to move to the single consignee at the manufacturer's place or at the beneficial owner's place, and not the container go just outside the 50-mile radius and be stripped and brought back into the terminal. We consider that a violation.

Q Well, Mr. Billups, tell me where in your contract it states that if McLean had a facility in Richmond, Virginia, that they specifically would have to strip it in Portsmouth rather than in Richmond. What precludes McLean from stripping it in Richmond? Where in the contract does it state that?

A He never proved to us he did strip it in Richmond.

Q I ask you where in the contract does it state that McLean could not strip in Richmond, Virginia?

A The question that our contract deals with is the container that is going to a beneficial owner, if the container does not go to the beneficial owner, we consider it a violation.

Q Even though outside the 50-mile geographic area, which you specifically exempt in the contract?

A We expect the container to go like it is. We gave up the right to strip the cargo from the container based on the fact that container was going to be stripped at its [202] ultimate destination by the consignee, receiving it at his house. That is what the contract called for house-to-house move.

Q Don't you want to go further, doesn't it have to be more than 50 miles away?

A Well, consignee's place can be inside a 50-mile radius as well as outside the 50-mile radius. If the beneficial owner has a plant and it is inside the 50-mile, we stil permit the container to move free. It could be G.E.

right here at Portsmouth and the container will go direct to G.E. plant and his own employees will strip the container or load the container. If it is outside 50 miles and the container is moving on a house-to-house move based on our contract, and it is going to a consignee and he is outside 50 miles then the container, we expect, the documentation says the container is going to the consignee, that the container would go to the consignee and we would strip the container with his own employees.

* * * *

[208] Q With respect to the containers that you have stripped, didn't you get $2 a ton for that?

A Yes, we would.

Q Also for the Pilot and the Thurston Motor Line containers, you get $2 a ton for that?

A Yes, because they were destined for single consignees outside 50 miles.

* * * *

[210] Q On Page 4 it says third paragraph "Mr. Vandeventer commented it seem to us that you are being unfair if you are stuffing and stripping cargo in a public warehouse in New York and you won't let D.D. Jones do it here."

You testified in New York that the same rules applied in New York as they did in the Hampton Roads area.

A I said, "As the Dublin Rules are written at this point in time we had no public warehouse written in this contract, anywhere in any of these contracts," that is something you sure can't find in there. There were no public warehouses, no 30-day clauses or nothing else, all we had in this contract was that the cargo was destined for a single beneficial owner, when it moves under that criteria that the cargo must go to the beneficial owner to avoid being stripped by Lonshoremen. And when the container load of Tuna Fish was taken it was destined for beneficial owner and it was taken to D.D. Jones' warehouse and stripped, it was in violation of that though moved on a beneficial owner's criteria.

* * * *

[216] A It does not state specifically that the seal can not be broken, but it does state at that time the exemp-

tions of a container being stripped by I.L.A. labor is a container that is moving a full shipper's load to a single consignee. If the container goes to a trucker's warehouse it loses that identity. It loses that identity of being a through container.

If it goes to a trucker's warehouse to be stripped then it loses the intent of the agreement that was made that says, "Lonshoremen, you give up your right to handle this cargo box by box, piece by piece, there is 30 tons of it in the box, but it is going straight to this man's house and he is going to unload it there, receive it there and take it out himself and you—we will give you a royalty on that to protect some of your man hours and your fringe benefits. But you let this box move through," and we do that.

Now, if that box don't go there, if it goes to a trucker's installation and he strips it, and does anything else with it other than the intent of the container it lost that identity.

Q So in actuality you want to deep sea I.L.A. labor to be able to do the work that Associated employees or Houff employees are now doing.

A No, no.

[217] MR. KELSEY: Only the court can draw such a conclusion.

THE COURT: Well, let him answer, he said that is no.

THE WITNESS: No, no, no. The only thing the contract set forth is to primarily protect a portion of the work that we have traditionally done. We did it all up until containers came. We did 100 percent of all of the work that came in the port. We unloaded every piece of steel, everything. We unloaded it piece by piece. Then when containers came in and we got certain exemption rules that gave certain containers the right to move our installations or from the installations in the port that we don't handle the cargo box by box, it goes straight through to the consignee. The man that owns the cargo, says, "sell it to my house in fact with the seal and everything there," all right, we give up—we permit that to happen with the royalty.

Now, as far as we are concerned it was the truckers' responsibility to handle that cargo. It was our responsibility to handle cargo if it was going to be hand or taken out of that container and it was not going straight through in fact to the beneficial owner, then we feel we should have taken it out of the box. If it had to be put in another cargo for some reason, it had to be loaded or something else, traditionally we have also loaded the trucks. So we could have taken it out of the container right there at [218] the pier and loaded it in the truck and then they could have carried it in there, could have stopped along side the road and put a box down and rode 50 more feet and put another box down, we wouldn't have bothered.

BY MR. ROSENSTEIN:

Q What gives it the right I.H.A. to tell the motor transport carrier how they should proceed with operations?

A We are not telling the motor transport operator, haven't said a word. Not one on them can say that I or any of my employees ever told them how to conduct their business. The only thing we are trying to do is implement a contract that was set down and negotiated in good faith between two employers. We sat down and negotiated dealing with the employers' equipment, the unloading of ships, the expedition of ships in and out of the port, the turnaround and the movement of the cargo. We negotiated with him. When he agrees that he would control and see to it that the contract was lived up to, that the container would go where he says it is destined to go. When it didn't go we went back to him not the trucker.

* * * *

[224] Q What do the I.L.A. freight handlers do?

A Freight handlers, they unload break-bulk cargo from trailers.

Q Aren't they involved at the pier area?

[225] A They weren't involved in containers.

Q I see.

A At all.

Q Is it not a fact under the 30-day warehousing section that it took less time for the cargo to finally get the warehouse than it did during the suspension of the rules themselves?

A Run that one by me again.

Q Didn't it take longer to finally get the cargo to public warehouse during the suspension of the rules than prior to the 30-day warehousing suspension was in effect.

A You would have to ask the steamship line or somebody else because I wouldn't have the answer to that.

Q Isn's it a fact that you had to, during the suspension, go throug opening seals of the 20-foot containers, taking that cargo out and storing it in your own warehouses; isn't that what you did?

A Well, if the cargo—what we did, we stripped containers at the pier when required, some of the containers we didn't strip, they put them in storage or let them stand by until later. I can't say whether it was faster or slower.

Q Isn't it a fact, Mr. Billups, under the 30-day warehousing section to be in your contract that the container went directly in fact without the seal being broken to a public warehouse such as D.D. Jones?

[226] A With the 30-day warehousing clause, yes.

* * * *

Q Wasn't one of the reasons that you suspended the rules on containers that you wanted to re-acquire that type of work break-bulk type of work?

A Not necessarily so. The reason the rules were suspended is because there was widespread misdocumentation of containers documented to go into warehouses under the criteria of normal warehousing going in one door in the morning and out the other door in the evening, that type of thing. The whole basis of the 30-day warehousing clause to permit such public warehousing was that in normal course of the public warehouses [227] business as it had been entered presented that if he was warehousing cargo then a normal stay of warehousing once again you are picking a normal circumstance 30-day just like you pick a normal dimension of 50 miles it may stay there 30 days but it said under normal circumstances cargo would stay a minimum of 30 days and could stay as much

as 6 months then that is warehousing but to take it in the front door and out the back and call it warehousing that is consolidated and we were having a lot of problems with that and so under the contract we suspended the rules until we could get a clearer understanding of the documentation so we would know what we were doing.

* * * *

[232] ALVIN MERRITT

was called as a witness and, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GLEASON:

Q What is your occupation?
A Container inspector for the port of Hampton Roads.
Q How long have you worked that?
A October 1, 1969.
Q And what did you do prior to that time?
A Longshoreman on the piers.
Q For how many year?
A Since 1956.
Q Could you tell us what your duties are as a container inspector?
A To protect the work jusisdiction of the I.L.A. and inforce its container contract.

* * * *

[234] Now, if a container was to be destined for Richmond, Virginia and was a shipper's load, and that container went to [235] a trucking company, and the trucking company stripped that container, would that be a shipper's load?

A No, it would not.
Q Why?
A Because it did not go to the ultimate consignee direct intact.
Q Now, how would you find out that that container did not go to the ultimate consignee?
A By policing the trucking companies and one finds the container there, go back to the piers or call the com-

pany and find out when did that particular container leave the terminal. If it lists say, I have it left at 2 o'clock going to Tennessee and we see it at 4 o'clock and we get the delivery on the box. We have a suspicion maybe they will be stripped then we put a special policeman on the thing. We will watch it constantly twice a day, sometimes at night. After we document this and once the box is returned, I see in maybe a day or so when we know definitely the box did not go to Tennessee.

Q There was reference about McLean Trucking; did you hear that?

A Yes.

Q Are you familiar with the facts in this case?

A Yes.

Q Could you explain what happened?

[236] A Well, I am going back a long way now.

Q When did this happen?

A '71, '71 something like that. The box left the terminal, I say at 3 o'clock. It was interchanged from N.I.T. at 3 o'clock. And during my policing I spot the two boxes I say around 5:00. In checking the two I find they are empty. So I take the numbers down and go back to the terminal and get the interchange and the delivery order. In this case these containers were destined for Decatur, Illinois. Now, I know in two and an half or three hours it can't go to Illinois and back.

Q Could they go to Richmond, Virginia?

A No, no way. And not be stripped and return to Portsmouth so what we do then, we, oh, I come back to the office, write it up as a violation. And it is signed it was then signed by International Vice President. And the letter goes to the Association and they grant you a meeting. I present the facts and then I leave the room and the committee agree or disagrees whether or not it is a violation.

Q Now, over the period of time since you have been investigator how many violations have you reported with reference to shipper's loads that were supposedly to be shipper's loads and were stripped?

A The number that I found?

Q How many would you say?

[237] A Well, 50 or 60, maybe 70.

* * * *

CROSS EXAMINATION

[241] Q The crux of this entire matter, as you state, is if a motor transport carrier strips this container at his facility within a 40-mile area of a port area and it does not go directly to the consignee then that is a violation of your agreement?

A Because then it is not a shipper's load.

* * * *

[250] Q You stated on direct there were—you reported since October 1969, 50 to 60 violations?

A In that neighborhood, I didn't say precisely.

Q Do those relate specifically to full shipper's loads?

A It is not a shipper's load if it is stripped without going to the strippers' premises and I would say those containers do contain—that in those instances, right.

Q Can you break it down for me? Prior to its being stripped how many full shipper's load were there that you initially reported violations on?

A I would have to go back to the record.

Q Isn't it a fact that in the minutes that all of the violations that you allege would have been reported in the I.L.A. containers' committee minutes between 1969, when you start, and 1974 and 1975?

A Every violation is on record.

Q Right.

And if there were going to be 50 or 60 violations they would all be contained in the minutes; is that correct?

A Definitely, ever last one of them.

Q Isn't it a fact that in those minutes it specifically talked about violations with respect to containers going into public warehouses?

[251] A Prior to the Dublin agreement that was a violation of our contract.

Q But that is not a full shipper's load, is it?

A Definitely. They were on a consignment to a full shipper's load and had it gone to the shipper's premises we would have not have touched the box.

* * * *

THE WITNESS: To my recollection the only violation that I ever found was one with D.D. Jones concerning some tuna fish. Now as far as assessing fines with D.D. Jones, we have no other fines with them.

[252] BY MR. ROSENSTEIN:

Q To the best of your recollection, how many separate motor transport carriers who were carrying shipper's loads destined to a point more than 50 miles to a beneficial owner, were reported as violations?

A Pilot, Thurston, Associate, McLean, and maybe several others.

Q Does that add up to 50 or 60?

A When I say 50, I am not talking about 50 or 60 companies, I am talking about 50 violations.

Q So you are telling me about 50 or 60 containers?

A Right.

Q The party that you just mentioned, Associate, we had determined that that took place in September of 1974, when the violation took place?

A There were prior violations with Associate when they were out on Popular Haul Road.

Q When did that take place?

Around '71 or '72.

Q Did you fine U.S. Lines?

A Yes.

Q Did U.S. Lines pay those fines?

A Yes.

Supreme Court, U. S.
FILED
MAR 7 1980
MICHAEL RODAK, JR., CLERK

APPENDIX

VOLUME II (pp. 235-468)

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,

Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 10, 1980
CERTIORARI GRANTED JANUARY 21, 1980

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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GENERAL COUNSEL'S EXHIBIT NO. 2

HAMPTON ROADS

LONGSHOREMEN'S AGREEMENT
CLERKS', CHECKERS' AND
WEIGHERS' AGREEMENT
MISCELLANEOUS WORKERS' AGREEMENT

FREIGHT HANDLERS' AGREEMENT
TERMINAL CHECKERS' AGREEMENT

Oct. 1, 1968—Sept. 30, 1971

[LABEL]

Hampton Roads Maritime Association
127-129 Bank Street
Norfolk, Virginia 23510

SECTION 1

SCOPE OF WORK OF ILA

The ILA shall have, insofar as it is compatible with the laws of the United States of America and the State of Virginia, all work of rigging and unrigging of cargo and passenger vessels and the loading and discharging of their cargoes, including all carpentry and lashing required in securing cargo while vessel is alongside pier, except vessels loading at coal piers, including mail, baggage and dunnage used in connection with the cargo being handled, under the following terms and conditions:

a. It is understood that this agreement does not apply to ships loading and/or discharging bulk liquids at oil installations, which work the employers have no legal or contractual right to give to the ILA during the term of this agreement.

b. For details concerning lashing and securing of containers as required by employer alongside pier—see Container Clause No. 53.

SECTION 53

RULES AND CONDITIONS COVERING HANDLING OF CONTAINERS IN HAMPTON ROADS TO BECOME EFFECTIVE FEBRUARY 22, 1969 EXCEPT AS OTHERWISE NOTED

1. SIZE OF GANGS FOR STUFFING AND/OR STRIPPING OF CONTAINERS

When stuffing or stripping containers at pierside or in the terminal area, a header and three (3) men will be used. Additional men are to be employed at the Employer's discretion; however, it is understood that when stuffing or stripping is carried out by hand not less than two (2) men per container will be used.

2. On loaded containers which are stuffed or unstuffed by other than ILA longshore labor, the amounts set forth below shall be paid into an ILA Royalty Fund, for such distribution and administration as may be determined by the Union, subject to the approval of the Internal Revenue Service and Virginia Department of Taxation and the U.S. Department of Labor. Until such approval is obtained, such funds shall be held in escrow by the Virginia National Bank. This Agreement with respect to Royalties does not apply to containers shifted for convenience or empty containers.

a. On conventional ships, thirty-five (35) cents per gross ton of cargo.

b. On conventional ships partially converted for handling containers, seventy (70) cents per gross ton of cargo.

c. On fully containerized vessels, one dollar ($1) per gross ton of cargo.

3. GANG SIZE FOR HANDLING OF CONTAINERS

When handling containers nineteen (19) men will be used. The utilization and placement of the men in the gang to be at the Employer's discretion. Crane operators, and straddle carrier operators, whether hired by the terminal company or by the stevedore, will be counted as part of the nineteen (19) man gang, effective October 1, 1969.

It is understood that no simultaneous securing or loading will be performed in a lift-on operation. The gang is to remain intact at all times.

a. When holdmen are being used to stuff or unstuff containers on the dock or on deck there will be no simultaneous loading or discharging in the hatch by the gang.

4. It is understood and agreed that when containers are stuffed (loaded) or unstuffed (unloaded) in any port by ILA longshoremen at longshoremen's rates the payment of royalties shown in Section 2, Paragraphs (a), (b), and (c) will not apply.

5. When the fifth wheel is required to move a container and/or chassis from the vessel to place of rest or from place of rest to the vessel within the terminal area, a member of the nineteen (19) man longshore gang will be used in accordance with Paragraph 3, effective October 1, 1969.

I. CONTAINERIZATION

Containers owned or leased by Employer-signatory members (including containers on wheels) containing LTL loads or consolidated full-container loads, which are destined for or come from, any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of

outbound cargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo, and which either comes from or is destined to any point within a 50-mile radius from the center of any North Atlantic District port shall be stuffed and stripped by ILA longshore labor at longshore rates on a waterfront facility under the terms and conditions of the General Cargo Agreement. (Rules on Containers are listed below)

II. RULES ON CONTAINERS

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts at deepsea piers or terminals. To assure compliance with the collective bargaining provisions the following rules and regulations shall be applied.

A. Definitions and Rule as to Containers Covered

Stuffing—means the act of placing cargo into a container

Stripping—means the act of removing cargo from a container

Loading—means the act of placing containers aboard a vessel

Discharging—means the act of removing containers from a vessel.

These provisions relate solely to containers meeting each and all of the following criteria:

1. Containers owned or leased by employer-signatory member (including containers on wheels) which contain LTL loads or consolidated full container loads.

2. Such containers which come from or go to any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo.

3. Such containers which come from or go to any point within a geographical area of any port in the

North Atlantic District described by a 50-mile circle within its radius extending out from the center of each port. It is understood that the center of Hampton Roads will be defined as Middle Ground Light.

B. Rule of Stripping and Stuffing Applied to Such Containers

A container which comes within each and all of the criteria set forth in "A" above shall be stuffed and stripped by ILA longshore labor. Such ILA labor shall be paid and employed at longshore rates under the terms and conditions of the General Cargo Agreement. Such stuffing and stripping shall be performed on a waterfront facility, pier or dock. No container of cargo shall be stuffed or stripped by ILA longshore labor more than once. Notwithstanding the above provisions, LTL loads or consolidated container loads of mail, of household goods with no other type of cargo in the container, and of personal effects of military personnel shall be exempt from the rule of stripping and stuffing.

C. Rules on No Avoidance or Evasion

The above rules are intended to be fairly and reasonably applied by the parties. To obtain nondiscriminatory and fair implementation of the above, the following principles shall apply.

1. Agreement in the Port as to the geographic area as provided in "A (3)" is based on present LTL movement patterns in the port. Should any person, firm or corporation, for the purpose of evading the provisions of "B" hereof, seek to change such pattern by shifting its operations to, or commencing new operations at, a point outside agreed-upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of "B", then said point shall be deemed to be within the said geographic area for purpose of these rules.

2. Containers owned or leased by companies which are affiliated either directly or through a holding company with an employer-member shall be deemed to be containers owned or leased by employer-members. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the employer-member, its parent, or stockholders of either of them.

3. It shall be the obligation of employer-members to clearly mark each container's documentation as to whether or not it is an "A" container which is to be stuffed and stripped at the waterfront facility (pier or dock).

4. Each employer-member shall keep records of each container supplied to a consolidator or other non-owner of cargo, located within the agreed geographic area, and such record shall be available to the Committee provided in (7) below. With respect to all containers received at or delivered from the vessel, a record of the same shall be made by ILA Checkers or Clerks.

5. Failure to stuff or strip a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of "B" shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been stuffed or stripped under the rules then the steamship carrier found guilty of intent to cause improper, fictitious, or incorrect documentation to evade the provisions of "B" above shall pay to the joint Welfare Fund $150.00 per container which should have been stuffed or stripped.

6. If any shippers or their agents who have at any time used, are now using, or in the future use containers owned or leased by employer-members, hereafter use containers not owned or leased by employer-members, for the purpose of evading the provisions of "B" hereof, then the containers so used shall be considered to be within "A" and "B".

7. A committee represented equally by management, and Union shall be formed and shall have the responsibility and power to hear and pass judgment on any

violations of these rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by "C (8)" hereof.

8. If the purpose of protecting and preserving the present work jurisdiction of longshoremen and all other deepsea ILA crafts over any containers loaded with LTL cargo, or consolidated full container loads as defined herein is not accomplished by the provisions of these rules on containers, then either party shall have the right to renegotiate these provisions or any part thereof by giving notice to the other party. This provision shall not be subject to arbitration. Pending renegotiation and settlement of the given dispute, the employees may decline to work the specific containers involved in the dispute and such refusal to work shall not be subject to arbitration. The renegotiation referred to above will not be subject to arbitration. Interpretation of this provision shall not be determined by an arbitrator but by a court of competent jurisdiction.

This Agreement settled and agreed upon this 20th day of February, 1969.

* * * *

ADDENDUM NO. 1

By mutual agreement, Section 53 (II) (c) (5) of the Hampton Roads Longshoremen's Agreement, October 1, 1968, to September 30, 1971, inclusive, entitled "Rules and Conditions Covering Handling of Containers in Hampton Roads to Become Effective February 22, 1969, Except as Otherwise Noted", is hereby amended and changed as follows:

5. "Failure to stuff or strip a container as required under these Rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of Rule II shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been stuffed or stripped under the Rules, then the steamship carrier shall pay to the Joint Container Royalty Fund

liquidated damages of $1,000.00 per container which should have been stuffed or stripped."

Each and every other provision of the "Rules on Containers", except as amended by the paragraph above, shall remain in full force and effect.

This amendment settled and agreed upon this 10th day of July, 1970.

WITNESS THE FOLLOWING SIGNATURES:

For Employer-Members of HRMA

(s) Larry E. Pentecost

Larry E. Pentecost, Chairman of
Employers' Negotiating Committee

For the Employee-Members of ILA

(s) David D. Alston

David D. Alston, International Vice President
International Longshoremen's Association
(AFL-CIO)

GENERAL COUNSEL'S EXHIBIT No. 3

HAMPTON ROADS

LONGSHOREMEN'S
AGREEMENT

CLERKS', CHECKERS' AND
WEIGHERS' AGREEMENT

TIMEKEEPERS' AND INTERCHANGE
WRITERS' AGREEMENT

CONTAINER MAINTENANCE
AND REPAIR AGREEMENT

MISCELLANEOUS WORKERS'
AGREEMENT

FREIGHT HANDLERS'
AGREEMENT

TERMINAL CHECKERS'
AGREEMENT

Nov. 14, 1971 — Sept. 30, 1974

[Union Label]

Hampton Roads Shipping Association
127-129 Bank Street
Norfolk, Virginia 23510

* * * *

SECTION I

SCOPE OF WORK OF ILA

The ILA shall have, insofar as it is compatible with the laws of the United States of America and the State of Virginia, all work of rigging and unrigging of cargo and passenger vessels and the loading and discharging of their cargoes, including all carpentry and lashing required in securing cargo while vessel is alongside pier, except vessels loading at coal piers, including mail, baggage and dunnage used in connection with the cargo being handled, under the following terms and conditions:

a. It is understood that this agreement does not apply to ships loading and/or discharging bulk liquids at oil installations, which work the employers have no legal or contractual right to give to the ILA during the term of this agreement.

For the purpose of preservation of the work bargained for in this contract between the HRSA and the ILA, the HRSA agrees that none of the above work given to the ILA and covered by this contract, which work the HRSA has the legal and contractual right to give to the ILA, can be subcontracted out by members of HRSA, or given to any union except the ILA and its affiliated Locals, or to any persons except ILA members, unless ILA men are unavailable, in which event the HRSA member may employ such men as are available.

SECTION 2

CONTRACT TERM

The contract term shall be from November 14, 1971 through September 30, 1974.

SECTION 3

SCOPE OF AGREEMENT

The parties agree that a master contract is to be applicable to all ports between Searsport, Maine, and

Hampton Roads, Virginia, in which the Union is recognized as the collective bargaining representative of employees, covering wages, hours, the amount of contributions for welfare and pension benefits and the term of the agreements, but not the benefits to be provided by different pension and welfare plans, container and LASH. It is recognized that the Employer Associations and the ILA Locals operating in each of the different ports (together with the ILA in those ports where both ILA Locals and the ILA customarily have been parties to the collective agreements) have the exclusive power to negotiate contracts fully and completely on local conditions and other terms except for wages, hours, pension contributions and welfare contributions, and term of the agreements, container and LASH.

SECTION 51

RULES AND CONDITIONS COVERING HANDLING OF CONTAINERS IN HAMPTON ROADS

1. SIZE OF GANGS FOR STUFFING AND/OR STRIPPING OF CONTAINERS

When stuffing or stripping containers at pierside or in the terminal area, a header and three (3) men will be used. Additional men are to be employed at the Employer's discretion; however, it is understood that when stuffing or stripping is carried out by hand not less than two (2) men per container will be used.

2. On loaded containers which are stuffed or unstuffed by other than ILA longshore labor, the amounts set forth below shall be paid into an ILA Royalty Fund, for such distribution and administration as may be determined by its Trustees.

a. On conventional ships, thirty-five (35) cents per gross ton of cargo.

b. On conventional ships partially converted for handling containers, seventy (70) cents per gross ton of cargo.

c. On fully containerized vessels, one dollar ($1) per gross ton of cargo.

d. An equivalent amount of Royalty as set forth above will be paid to the Trustees of the HRMA-ILA Welfare and Pension Funds for such disposition and specific use as may be directed by the HRSA-ILA Trustees, as per Master Contract.

3. GANG SIZE FOR HANDLING OF CONTAINERS

When handling containers nineteen (19) men will be used. The utilization and placement of the men in the gang to be at the Employer's discretion. Crane operators, whether hired by the terminal company or by the stevedore, will be counted as part of the nineteen (19) man gang.

The container gang will perform no lashing. When lashing or unlashing is required, a lashing gang, with a minimum of a header and six (6) men, will be utilized. This clause does not apply to barges.

a. When holdmen are being used to stuff or unstuff containers on the dock or on deck there will be no simultaneous loading or discharging in the hatch by the gang.

4. It is understood and agreed that when containers are stuffed (loaded) or unstuffed (unloaded) in any port by ILA longshoremen at longshoremen's rates the payment of royalties shown in Section 2, Paragraphs (a), (b), and (c) will not apply. This clause is also applicable to the additional Container Royalty to be paid over to the Trustes of the HRMA-ILA Pension and Welfare Funds.

5. When a fifth wheel is required to move a container and/or chassis from the vessel to place of rest or from place of rest to the vessel within the terminal area, a member of the nineteen (19) man longshore gang will be used in accordance with Paragraph 3.

6. CONTAINERIZATION

RULES ON CONTAINERS

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all

other ILA crafts at deepsea piers or terminals. To assure compliance with the collective bargaining provisions, the following rules and regulations shall be applied:

Rule 1. Definitions and Rule as to Containers Covered

Stuffing—means the act of placing cargo in a container.

Stripping—means the act of removing cargo from a container.

Loading—means the act of placing containers aboard a vessel.

Discharging—means the act of removing containers from a vessel.

These provisions relate solely to containers meeting each and all of the following criteria:

(a) Containers owned or leased by employer-members (including containers on wheels) which contain LTL loads or consolidated full container loads.

(b) Such containers which come from or go to any person (including but not limited to a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo.

(c) Such containers which come from or go to any point within a geographical area of any port in the North Atlantic District described by a 50-mile circle with its radius extending out from the center of each port.

Rule 2. Rule of Stripping and Stuffing Applied to Such Containers

A container which comes within each and all of the criteria set forth in Rule 1 above shall be stuffed and stripped by ILA longshore labor. Such ILA labor shall be paid and employed at longshore rates under the terms and conditions of the General Cargo Agreement. Such stuffing and stripping shall be performed on a waterfront facility, pier or dock. No container of cargo shall be stuffed or stripped by ILA longshore labor more than once. Notwithstanding the above provisions, LTL loads

or consolidated container loads of mail, of household goods with no other type of cargo in the container, and of personal effects of military personnel shall be exempt from the rule of stripping and stuffing.

Rule 3. Rules on No Avoidance or Evasion

The above rules are intended to be fairly and reasonably applied by the parties. To obtain nondiscriminatory and fair implementation of the above, the following principles shall apply:

(a) Agreement in the Port as to the geographic area as provided in Rule 1 (c) is based on present LTL movement patterns in the port. Should any person, firm or corporation, for the purpose of evading the provisions of Rule 2 hereof, seek to change such pattern by shifting its operations to, or commencing new operations at, a point outside said agreed-upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of Rule 2, then said point shall be deemed to be within the said geographic area for the purpose of these rules.

(b) Containers owned or leased by companies which are affiliated either directly or through a holding company with an employer-member shall be deemed to be containers owned or leased by employer-members. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the employer-member, its parent, or stockholders of either of them.

(c) It shall be the obligation of employer-members to clearly mark each container's documentation as to whether or not it is a Rule 1 container which is to be stuffed and stripped at the waterfront facility (pier or dock). If a container is not clearly marked it shall be deemed a Rule 1 container, and it shall be stuffed or stripped.

(d) Each employer-member shall keep records of each container supplied to a consolidator or other non-owner of cargo, located within the agreed geographic area, and such record shall be available to the Committee provided in (g) below. With respect to all containers received at

or delivered from the waterfront facility (pier or dock), a record of the same shall be made by ILA Checkers or Clerks.

(e) Failure to stuff or strip a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of Rule 2 shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been stuffed or stripped under the rules, then the steamship carrier shall pay, to the joint Container Royalty Fund, liquidated damages of $1,000 per container which should have been stuffed or stripped. Such damages shall be used for the same purposes as the first Container Royalty is used in each port. If any carrier does not pay liquidated damages within 30 days after exhausting its right to appeal the imposition of liquidated damages to the Committee provided in (g) below, the ILA shall have the right to stop working such carrier's containers until such damages are paid.

(f) A committee represented equally by management and Union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by "C (8)" hereof.

(g) If the purpose of protecting and preserving the present work jurisdiction of longshoremen and all other deepsea ILA crafts over any containers loaded with LTL cargo, or consolidated full container loads as defined herein is not accomplished by the provisions of these rules to renegotiate these provisions or any part thereof by giving notice to the other party. This provision shall not be subject to arbitration. Pending renegotiation and settlement of the given dispute, the employees may decline to work the specific containers involved in the dispute and such refusal to work shall not be subject to arbitration. The renegotiation referred to above will not be subject to arbitration. Interpretation of this provision shall not be determined by an arbitrator but by a court of competent jurisdiction.

SECTION 52

LASH AGREEMENT

1. All LASH ships shall be loaded and unloaded exclusively by ILA longshore labor, checked by ILA deepsea checkers, maintained by the ILA cooper, carpenter and maintenance locals at a waterfront facility (meaning a pier or dock, marshalling area, roadstead or other facility or location where LASH vessels are normally and usually loaded and discharged). All lighters shall be loaded and unloaded by ILA longshore labor. The employer shall use the gang system in the loading and unloading of the lighters.

2. The gang shall consist of the following men when working:

STEEL AND OTHER HEAVY CARGO

11 longshoremen plus a checker and a foreman

GENERAL CARGO

14 longshoremen plus a checker and a foreman.

3. The gang shall work as a unit, a gang shall work only one lighter at a time, the gang cannot be broken up so it can work two or more lighters at one time. The gang shall move from lighter to lighter as a gang unit.

4. The employer shall employ two gangs consisting of 18 men each plus any additional machine operators which are needed in the loading and unloading of the LASH ship.

5. The agreement covering the LASH system and opeartions shall be in effect for a period of 60 days and from month to month thereafter provided that either party shall have the right to cancel the agreement at any time after said 60 days period on 10 days written notice, and pending the consummation of a new agreement, the employees may decline to work any LASH lighters and ships and such negotiation shall not be subject to arbitration.

WITNESS THE FOLLOWING SIGNATURES THIS 3RD DAY OF JULY, 1972:

GENERAL COUNSEL'S EXHIBIT NO. 4

HAMPTON ROADS

[UNION LABEL]

LONGSHOREMEN'S AGREEMENT

CLERKS', CHECKERS' AND WEIGHERS' AGREEMENT

TIMEKEEPERS' AND INTERCHANGE WRITERS' AGREEMENT

CONTAINER MAINTENANCE AND REPAIR AGREEMENT

GEARMEN AND MECHANICS AGREEMENT

MISCELLANEOUS WORKERS' AGREEMENT

Oct. 1, 1974—Sept. 30, 1977

Hampton Roads Shipping Association
127-129 Bank Street
Norfolk, Virginia 23510

* * * *

SECTION 1

SCOPE OF WORK OF ILA

The ILA shall have, insofar as it is compatible with the laws of the United States of America and the State of Virginia, all work of rigging and unrigging of cargo and passenger vessels and the loading and discharging of their cargoes, including all carpentry and lashing required in securing cargo while vessel is alongside pier, including vessels loading at coal piers when required by

signatory employers, including mail, baggage and dunnage used in connection with the cargo being handled, including all stuffing and stripping, handling and movement of containers at waterfront facilities within a 50-mile radius from the center of the Port of Hampton Roads excluding movements of containers for repairs from point of rest and return, which shall be performed by members of 1970, and the loading and discharging of lash ships and barges of their cargoes under the following terms and conditions:

a. It is understood that this agreement does not apply to ships loading and or discharging bulk liquids at oil installations, which work the employers have no legal or contractual right to give to the ILA during the term of this agreement.

For the purpose of preservation of the work bargained for in this contract between the HRSA and the ILA, the HRSA agrees that none of the above work given to the ILA and covered by this contract, which work the HRSA has the legal and contractual right to give to the ILA, can be subcontracted out by members of HRSA, or given to any union except the ILA and its affiliated Locals, or to any persons except ILA members, unless ILA men are unavailable, in which event the HRSA member may employ such men as are available.

* * * *

SECTION 51
RULES AND CONDITIONS COVERING HANDLING OF CONTAINERS IN HAMPTON ROADS

1. SIZE OF GANGS FOR STUFFING AND/OR STRIPPING OF CONTAINERS

When stuffing or stripping containers at pierside or in the terminal area, a header and three (3) men will be used. Additional men are to be employed at the Employer's discretion; however, it is understood that when stuffing or stripping is carried out by hand not less than two (2) men per container will be used.

2. On loaded containers which are stuffed or unstuffed by other than ILA longshore labor, the amounts set forth below shall be paid into an ILA Royalty Fund, for such distribution and administration as may be determined by its Trustees.

a. On conventional ships, thirty-five (35) cents per gross ton of cargo.

b. On conventional ships partially converted for handling containers, seventy (70) cents per gross ton of cargo.

c. On fully containerized vessels, one dollar ($1) per gross ton of cargo.

d. An equivalent amount of Royalty as set forth above will be paid to the Trustees of the HRMA-ILA Welfare and Pension Funds for such disposition and specific use as may be directed by the HRSA-ILA Trustees, as per Master Contract.

3. GANG SIZE FOR HANDLING OF CONTAINERS

When handling containers nineteen (19) men will be used. The utilization and placement of the men in the gang to be at the Employer's discretion. Crane operators, whether hired by the terminal company or by the stevedore, will be counted as part of the nineteen (19) man gang.

The container gang will perform no lashing. When lashing or unlashing is required, a lashing gang, with a minimum of a header and six (6) men, will be utilized. This clause does not apply to barges.

a. When holdmen are being used to stuff or unstuff containers on the dock or on deck there will be no simultaneous loading or discharging in the hatch by the gang.

4. It is understood and agreed that when containers are stuffed (loaded) or unstuffed (unloaded) in any port by ILA longshoremen at longshoremen's rates the payment of royalties shown in Section 2, Paragraphs (a), (b), and (c) will not apply. This clause is also applicable to the additional Container Royalty to be paid over to the Trustees of the HRMA-ILA Pension and Welfare Funds.

5. When a fifth wheel is required to move a container and/or chassis from the vessel to place of rest or from place of rest to the vessel within the terminal area, a member of the nineteen (19) man longshore gang will be used in accordance with Paragraph 3.

SECTION 52

CONASA-ILA RULES ON CONTAINERS

PREAMBLE

This Agreement made and entered into by and between the carrier and direct employer members of the CONASA Port Associations (hereinafter referred to collectively as "CONASA") and the International Longshoremen's Association, AFL-CIO ("ILA"), its Atlantic Coast District ("ACD") and its affiliated local unions in each CONASA port ("locals") covers all container work at a waterfront facility which includes but is not limited to the receiving and delivery of cargo, the loading and discharging of said cargo into and out of containers, the maintenance of containers, and the loading and discharging of containers on and off ships.

CONASA agrees that it will not directly perform work done on a container waterfront facility (as hereinafter defined) or contract out such work which historically and regularly has been & currently is performed by employees covered by CONASA-ILA Agreements, including CONASA-ILA craft agreements, unless such work on such container waterfront facility is performed by employees covered by CONASA-ILA Agreements.

RULES

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts which was performed at deepsea waterfront facilities. These rules do not have any effect on work which historically was not performed at a waterfront facility by deepsea ILA labor. To assure compliance with the collective bargaining provisions, the following rules and regulations shall be applied uniformly in all CONASA Ports to all import or export cargo in containers:

Definitions

(a) Loading a Container—means the act of placing cargo into a container.

(b) Discharging a Container—means the act of removing cargo from a container.

(c) Loading Containers on a vessel—means the act of placing containers aboard a vessel.

(d) Discharging Containers from a vessel—means the act of removing containers from a vessel.

(e) Waterfront facility—means a pier or dock where vessels are normally worked including a container compound operated by a carrier or direct employer.

(f) Qualified Shipper—means the manufacturer or seller having a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the export cargo being transported and who is named in the dock/cargo receipt.

(g) Qualified Consignee—Means the purchaser or one who otherwise has a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the import cargo being transported and who is named in the delivery order.

(h) Consolidated Container Load—means a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo.

Rule 1—Containers To Be Loaded or Discharged by Deepsea ILA Labor

(a) Cargo in containers referred to below shall be loaded into or discharged out of containers only at a waterfront facility by deepsea ILA labor:

(1) Containers owned, leased or used by carriers (including containers on wheels and trailers), hereinafter

"containers", which contain consolidated container loads, which come from or go to any point within a geographic area of any CONASA port described by a 50-mile circle with its radius extending out from the center of each port, (hereinafter "geographic area") or

(2) Containers which come from a single shipper which is not the manufacturer ("manufacturer's label") into which the cargo has been loaded (consolidated) by other than its own employees and such containers come from any point within the "geographic area," or

(3) Containers designated for a single consignee from which the cargo is discharged (deconsolidated) by other than its own employees within the "geographic area" and which is not warehoused in accordance with Rule 2(B).

(b) Such ILA labor shall be paid and employed at deep-sea longshore rates under the terms and conditions of the deep-sea ILA labor agreement in each CONASA port, including the provisions for all fringe benefits and any and all other benefits receivable by deep-sea ILA craft workers in each such Port. No cargo shall be loaded into or discharged out of any container by ILA deep-sea labor more than once.

(c) All export consolidated cargo, described in 1(a) (1) and (2) above, shall be received at the waterfront facility by deep-sea ILA labor and such cargo shall be loaded into a container at the waterfront facility for loading aboard ship.

(d) All import consolidated cargo, described in 1(a (1) and (3) above, shall be discharged from the container and the cargo placed on the waterfront facility where it will be delivered and picked up by each consignee.

(e) No carrier or direct employee shall supply its containers to any consolidator or de-consolidator. No carrier or direct employer shall operate a facility in violation of the Rules on Containers which specifically require that

all Rule 1 Containers be loaded or discharged at a waterfront facility.

Rule 2—Containers Not to be Loaded or Discharged by ILA Labor

Cargo in containers referred to below shall not be loaded or discharged by ILA labor:

A. Export Cargo:

(1) All cargo loaded in containers outside the "geographic area".

(2) Containers loaded with cargo at a qualified shipper's facility with its own employees.

(3) Containers loaded with the cargo of a single manufacturer (manufacturer's label).

(4) Consolidated container loads of mail, household effects of a person who is relocating his place of residence, with no other type of cargo in the container, or personal effects of military personnel.

B. Import Corgo;

(1) All cargo discharged from containers outside the "geographic area".

(2) Containers discharged at a qualified consignee's facility by its own employees.

(3) Consolidated container loads of mail, household effects of a person who is relocating his place of business, with no other type of cargo in the container, or personal effects of military personnel.

(4) Containers of a qualified consignee discharged at a bona fide public warehouse within the "geographic area" which comply with all of the following conditions.

1. The container cargo is warehoused at a bona fide public warehouse.

2. The qualified consignee pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days, and;

3. The cargo being warehoused (a) in the normal course of the business of the qualified consignee; (b) title to such goods has not been transferred from the qualified consignee to another.

The carrier on request will furnish all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2 and 3 have been met. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1. It is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a consolidator or de-consolidator.

Rule 3—Batching

When an employer-member or carrier uses a trucker to remove or deliver containers in batches, or in substantial number, from or to a terminal to another place of rest (outside of its terminal) where containers are stored pending their delivery to a consignee (or after being received from a shipper and while waiting the arrival of a ship), for the purpose of reducing the work jurisdiction of the ILA or any of its crafts, such use is deemed to be batching and an evasion of these Rules in violation of the CONASA-ILA contract.

Rule 4—Headload

Where a single qualified shipper sends an export container which contains all of his own cargo to a waterfront facility and such container is not full, the carrier or direct employer may load this container with additional cargo at the waterfront facility. On import cargo, the carrier or direct employer may discharge any such additional cargo and send the remaining cargo in the container to the qualified consignee. The loading or discharging of cargo at ILA ports shall be performed at a waterfront facility by deepsea ILA labor.

Rule 5—Overland Movement of Containers from CONASA Port to Non-CONASA Port

If a carrier moves containers from a CONASA Port to a non-CONASA Port for the purpose of evading the Rules on Containers, the carrier is in violation of the CONASA-ILA Agreement. If the cargo is being moved to a non-CONASA-ILA Port in the normal course of business, and not for the purpose of evasion, then such movement is not a violation.

Rule 6—Importers Advertising Evasion of Rules

The circulation, in writing, by importers, of methods developed by them to evade the Rules on Containers by issuing single bills of lading on what are in fact consolidated container loads shall be deemed a violation and all CONASA-ILA Container Committees shall be advised to stop such evasion at the waterfront facilities.

Rule 7—No Avoidance or Evasion

The above rules are intended to be fairly and reasonably applied by the parties. To obtain non-discriminatory and fair implementation of the above, the following principles shall apply:

(a) *Geographic Area*—Agreement in the Port to the geographic area as provided in Rule 1 is based on present consolidated movement patterns in the port. Should any person, firm or corporation for the purpose of evading the provisions of the Rules on Containers, seek to change such pattern by shifting its operations to, or commencing new operations at, a point outside said agreed upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of the Rules on Containers, then said point shall be deemed to be within the said geographic area for the purpose of these rules.

(b) *Containers Owned, Leased or Used*
Containers owned, leased or used by companies which are affiliated either directly or through a holding company with a carrier or a direct employer shall be deemed to be containers owned, leased or used by a carrier or direct employer. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the carrier or direct employer, its parent, or stockholders of either of them.

(c) *Liquidated Damages*—Failure to load or discharge a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of Rule 1 and Rule 2 shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been loaded or discharged under the Rules, then the carrier or its agent or direct employer shall pay, to the joint Container Royalty Fund, liquidated damages of $1,000 per container which should have been loaded or discharged. If any carrier does not pay liquidated damages within 30 days after exhausting its right to appeal the imposition of liquidated damages to the Committee provided in Rule 9(a) below, the ILA shall have the right to stop working such carrier's containers until such damages are paid.

(d) Any facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility.

Rule 8—Renegotiation and Cancellation—No Arbitration

These Rules shall be in effect for the term of the CONASA-ILA Agreement, provided, however, that either party shall have the right to cancel the Rules on Containers at any time on or after December 1, 1974, on thirty (30) days written notice of a desire to renegotiate the provisions of these Rules. Negotiations shall

be held during such thirty (30) day period and if the parties are unable to agree by the end of such period, these Rules shall be deemed cancelled. Thereafter, the ILA shall have the right to refuse to handle containers and CONASA shall have the right to refuse to hire employees under the said Rules. The negotiations referred to above shall, under no condition, be subject to the grievance or arbitration provisions of any CONASA-ILA Agreement.

Rule 9—Enforcement of the Rules on Containers

To assure effective, fair and non-discriminatory enforcement of the above Rules, the following regulations shall apply:

(a) A Committee in each CONASA port represented equally by management and union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these Rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by Rule 8 hereof. A joint committee, known as the CONASA-ILA Container Committee, represented equally by management and labor and made up of representatives (to be mutually agreed upon) from each CONASA Port, namely, Boston, Rhode Island, New York, Philadelphia, Baltimore and Hampton Roads shall meet at least quarterly each year for the purpose of insuring uniformity in the interpretation of these Rules.

(b) A Committee of carriers, together with CONASA-ILA Container Committee will develop uniform documentation which shall be required to be prepared and maintained by all carriers in order to readily identify all Rule 1 containers which are subject to loading or discharging by deepsea ILA labor. It shall be the obligation of employer-members to clearly mark each container's documentation as to whether or not it is a Rule 1 container, which shall be loaded or discharged. If a container's documentation is not clearly marked, it shall be deemed a Rule 1 container and it shall be

loaded or discharged by deepsea ILA labor at the waterfront facility. With respect to all containers received at or delivered from the waterfront facility, a record of the same shall be made by ILA Checkers or Clerks. All carriers will distribute to all other carriers any and all information and devices which are being used by any person to circumvent the Rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate CONASA-ILA Container Committee and to the policing agency provided in (e) below in its port.

(c) Every import container destined to a point within 50-miles of a CONASA Port shall be delivered only on a delivery order. Every export container coming from a point within 50-miles of a CONASA Port shall be received only on a dock/cargo receipt. Such delivery orders and dock/cargo receipts shall certify the place of delivery and origin of the container, the name or names of the person to whom the cargo is being delivered and from which it is shipped, the identity of the owner of the cargo, weight of the cargo, identity of the cargo and the origin and final destination of the container. Copies of such delivery orders and dock/cargo receipts shall be available to the local port Container Committee and the policing agency provided for in (e) below.

(d) The Container Committee in each CONASA Port shall promulgate to all carriers and direct employers, and to the Container Committees in each CONASA Port, any and all interpretations of the Rules on Containers as and when they are made. This will include uniform interpretations as and when they are issued. The CONASA-ILA Container Committee shall also promulgate uniform interpretations to local port Container Committees, as and when they are issued.

(e) *Policing Agency*-Each CONASA Port shall establish a method of policing and enforcing these Rules on a uniform and non-discriminatory basis. No such

method shall be implemented until presented to and approved by the joint CONASA-ILA Container Committee.

Rule 10—Container Royalty Payments

The two Container Royalty payments required by the CONASA-ILA collective bargaining agreements shall be payable only once in the Continental United States. They shall be paid in that ILA Port where the container is first handled by ILA longshore labor at longshore rates. The second container royalty payment (provided by paragraph 6 of the 1971-1974 CONASA-ILA Memorandum of Agreements) shall be continued and shall be used for fringe benefit purposes only, other than supplemental cash benefits, which purposes are to be determined locally on a port by port basis. Containers originating at a foreign port which are transshipped at a United States port for ultimate destination to another foreign port ("foreign sea-to-foreign-sea containers") are exempt from the payment of container royalties.

* * * *

GENERAL COUNSEL'S EXHIBIT No. 10

CONASA-ILA CONTAINER COMMITTEE

80 Broad Street
New York, N.Y. 10004
(212) 943-2765

INTERPRETIVE BULLETIN NO. 1

In accordance with the resolution made at the January 29, 1973, meeting of the CONASA-ILA Container Committee, directing that all interpretations be issued by the CONASA-ILA Container Committee office and promulgated to all local Port Container Committees as well as all other interested parties, Interpretive Bulletins will be issued periodically by the CONASA-ILA Container Committee for the information of all interested parties.

This document is the first such Interpretive Bulletin and sets forth the determinations reached by the CONASA-ILA Container Committee at its meetings of September 11-13, 1972, and at its meetings of January 25-29, 1973.

No persons or representative is authorized to issue any interpretations other than the Port Container Committees in each CONASA port subject to review by the full CONASA-ILA Container Committee in cases of conflict. The CONASA-ILA Container Committee will issue further clarifications and interpretations only at the request of members of one of the CONASA Port Associations or an official of an ILA Local Union. Interpretations and clarifications will not be issued to any party not covered by the various Collective Bargaining Agreements. Requests, in writing, for clarifications and interpretations should be addressed to the CONASA-ILA Container Committee at the above address.

The CONASA-ILA Container Committee has issued the following interpretations and definitions as of the date of this Bulletin:

INTERPRETATION 1.1

Containers Covered

The rules on containers relate solely to containers meeting either of the following criteria:

(a) Containers owned or leased by carriers (including containers on wheels) which contain LTL loads or consolidated full container loads, which come from or go to any point within a geographical area of any port in the North Atlantic District described by a 50-mile circle with its radius extending out from the center of each port.

(b) Containers which come from or go to any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not a beneficial owner of the cargo and such containers come from or go to any point within a geographical area of any port in the North Atlantic District described by a 50-mile circle with its radius extending out from the center of each port.

INTERPRETATION 1.2

Batching

When an employer member or carrier uses a trucker to remove or deliver containers in batches, or in substantial number, from or to a terminal to another place of rest (outside of its terminal) where containers are stored pending their delivery to consignee (or after being received from a shipper and while awaiting the arrival of a ship), for the purpose of reducing the work jurisdiction of the ILA or any of its crafts (and when adequate physical space exists on the facility for storage of such containers), such use is deemed to be batching and is a violation of the CONASA-ILA contract.

INTERPRETATION 1.3

Warehousing

A beneficial owner does not violate the Rules on Containers when he warehouses his goods in bona fide public warehouse under the following conditions:

1. The container cargo is warehoused at a bona fide public warehouse.
2. The beneficial owner pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days; and
3. The cargo is being warehoused (a) in the normal course of the business of the beneficial owner; (b) title to such goods has not been transferred from the beneficial owner to another; and (c) it is contemplated that such transfer of title will not take place for at least 30 days after the warehousing of the cargo. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1.
4. The beneficial owner furnishes all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2 and 3 have been met.
5. This definition is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a distribution station and treated accordingly.

INTERPRETATION 1.4

Beneficial Owner

The beneficial owner is the ultimate owner entitled to the beneficial use, enjoyment and title of the property. The term ultimate owner refers to one using the cargo in the normal course of his business but it does not include a broker, distributor, consolidator, trucker, forwarder, warehouseman or the ultimate consumer.

INTERPRETATION 1.5

Headload

Where a single beneficial owner sends a container (either export or import) which contains all of his own cargo to a carrier's pier and such container is not full, the carrier may chock this container with additional cargo and at arrival at another port the carrier may strip the additional cargo and send the remaining cargo to the beneficial owner. The chocking or stripping at ILA ports shall be performed at a pier by deepsea ILA labor.

INTERPRETATION 1.6

Enforcement of Rules on Containers

The following standards are hereby promulgated to assure fair and non-discriminatory enforcement of the CONASA-ILA Rules on Containers.

1. (a) All outbound (export) consolidated or LTL container loads (Rule 1 containers) shall be stripped from the container at the pier by deepsea ILA labor and cargo shall be stuffed into a different container for loading aboard ship.

1. (b) All inbound (import) consolidated or LTL cargo (Rule 1 containers) for distribution shall be stripped from the container and the cargo placed on the pier where it will be delivered and picked up by each consignee.

2. No carrier or direct employer shall supply its containers to any facilities operated in violation of the Rules on Containers including but not limited to a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder who is either a consolidator or a distributor. No carrier or direct employer shall operate a

facility in violation of the Rule on Containers which specifically require that all containers be stuffed or stripped at a waterfront facility (pier or dock) where vessels normally dock.

A list shall be maintained of consolidation and distribution stations which are operated in violation of the Rules for the information of all carriers and direct employers. Any container consolidated at or distributed from such facilities shall be deemed a violation and subject to the rules on stuffing and stripping.

3. A committee of carriers, together with CONASA-ILA Container Committee will develop uniform documentation which shall be required to be prepared and maintained by all carriers in order to readily identify all Rule 1 containers which are subject to stuffing or stripping by deepsea ILA labor.

4. All carriers will distribute to all other carriers any and all information and devices which are being used by any person to circumvent the Rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate CONASA-ILA Container Committee in its port.

5. The Container Committee in each CONASA port shall promulgate to all carriers and direct employers, and to the Container Committees in each CONASA port, any and all interpretations of the Rules on Containers as and when they are made. This will include uniform interpretations as and when they are issued by the CONASA-ILA Container Committee.

6. Any facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility.

INTERPRETATION 1.7

Overland Movement of Containers from CONASA Port to Non-CONASA Port

If a steamship line moves containers from a CONASA port to a non-CONASA port for the purpose of evading the rules on containers, the line is in violation of the CONASA-ILA Agreement. If the cargo is being moved to the non-ILA port to meet the requirements of local market conditions, and not for the purpose of evasion, then such movement is not within the rules.

INTERPRETATION 1.8

Importers Advertising Evasion of Rules

The ILA brought to the attention of CONASA that certain importers were circulating, in writing, methods developed by them to evade the rules on containers by issuing single bills of lading on what are in fact consolidated container loads of many beneficial owners. CONASA and ILA agreed that such evasion would be stopped wherever it was found.

GENERAL COUNSEL'S EXHIBIT No. 11

AGREEMENTS

NEGOTIATED BY THE

Steamship Trade Association

of Baltimore, Inc.

For Its Members

with the

International

Longshoremen's

Association

AFL-CIO

for the

Port of Baltimore

Effective October 1, 1968

through September 30, 1971

[Union Label]

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THE FOLLOWING PROVISIONS ARE APPLICABLE TO ALL LOCALS

CONTAINERIZATION

Containers owned or leased by employer-members (including containers on wheels) containing LTL loads or consolidated full-container loads, which are destined for or come from, any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo, and which either comes from or is destined to any point within a 50 mile radius from the center foany North Atlantic District port shall be stuffed and stripped by ILA labor at longshore rates on a waterfront facility under the terms and conditions of the General Cargo Agreement.

RULES ON CONTAINERS

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts at deepsea piers or terminals. To assure compliance with the collective bargaining provisions the following rules and regulations shall be applied:

Rule 1. *Definitions and Rule as to Containers Covered.*

Stuffing—means the act of placing cargo into a container.

Stripping—means the act of removing cargo from a container.

Loading—means the act of placing containers aboard a vessel.

Discharging—means the act of removing containers from a vessel.

These provisions relate solely to containers meeting each and all of the following criteria:

(a) Containers owned or leased by employer-members (including containers on wheels) which contain LTL loads or consolidated full container loads.

(b) Such containers which come from or go to any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not the beneficial owner of the cargo.

(c) Such containers which come from or go to any point within a geographical area of any port in the North Atlantic District described by a 50 mile circle with its radius extending out from the center of each port.

Rule 2. *Rule of Stripping and Stuffing Applied to Such Containers*

A container which comes within each and all of the criteria set forth in Rule 1 above shall be stuffed and stripped by ILA longshore labor. Such ILA labor shall be paid and employed at longshore rates under the terms and conditions of the General Cargo Agreement. Such stuffing and stripping shall be performed on a waterfront facility, pier or dock. No container of cargo shall be stuffed or stripped by ILA longshore labor more than once. Notwithstanding the above provisions, LTL loads or consolidated container loads of mail, of household goods with no other type of cargo in the container, and of personal effects of military personnel shall be exempt from the rule of stripping and stuffing.

Rule 3. *Rules on No Avoidance or Evasion*

The above rules are intended to be fairly and reasonably applied by the parties. To obtain nondiscriminatory and fair implementation of the above, the following principles shall apply:

(a) Agreement in the Port as to the geographic area as provided in Rule 1-(c) is based on present LTL movement patterns in the port. Should any person, firm or corporation, for the purpose of evading the provisions of Rule 2 hereof, seek to change such pattern by shifting its operations to, or commencing new operations at, a point outside said agreed-upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of Rule 2, then said point shall be deemed to be within the said geographic area for the purpose of these rules.

(b) Containers owned or leased by companies which are affiliated either directly or through a holding company with an employer-member shall be deemed to be containers owned or leased by employer-members. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the employer-members, its parent, or stockholders of either of them.

(c) It shall be the obligation of employer-members to clearly mark each container's documentation as to whether or not it is a Rule 1 container which is to be stuffed and stripped at the waterfront facility (pier or dock).

(d) Each employer-member shall keep records of each container supplied to a consolidator or other non-owner of cargo, located within the agreed geographic area, and such record shall be available to the Committee provided in (g) below. With respect to all containers, received at or delivered from the waterfront facility, (pier or dock) a record of the same shall be made by ILA Checkers or Clerks.

(e) Failure to stuff or strip a container as required under these rules will be considered

a violation of the contract between the parties. Use of improper, fictitious or incorrect documents to evade the provisions of Rule 2 shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been stuffed or stripped under the rules then the steamship carrier shall pay to the joint Welfare Fund liquidated damages of $250 per container which should have been stuffed or stripped.

(f) If any shippers or their agents who have at any time used, are now using, or in the future use containers owned or leased by employer-members, hereafter used containers not owned or leased by employer-members, for the purpose of evading the provisions of Rule 2 hereof, then the containers so used shall be considered to be within Rule 1 and Rule 2.

(g) A committee represented equally by management and union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by 3(h) hereof.

(h) If the purpose of protecting and preserving the present work jurisdiction of longshoremen and all other deepsea ILA crafts over any containers loaded with LTL cargo as defined herein is not accomplished by the provisions of these rules on containers, then either party shall have the right to renegotiate these provisions or any part thereof by giving notice to the other party. This provision shall not be subject to arbitration. Pending renegotiation and settlement of the given dispute, the employees may decline to work any containers involved in the dispute and such refusal to work shall not be subject to arbitra-

tion. The renegotiation referred to above will not be subject to arbitration. Interpretation of this provision shall not be determined by an arbitrator but by a court of competent jurisdiction.

Container Royalty

The rate of contributions now in effect shall continue.

GUARANTEED ANNUAL INCOME

1. Effective October 1, 1969, and for the remainder of the term of this Agreement, all employees covered by this Agreement who are properly registered as provided in this Agreement, shall be guaranteed an annual income of 1800 hours per Contract Year October 1, 1969 through September 30, 1970, and 1800 hours per Contract Year October 1, 1970 through September 30, 1971, multiplied by the existing hourly straight time rate applicable during each such year subject to the following provisions:

a. Any such employee must have worked at least 700 hours for which contributions have been made to the STA of Balto.-ILA Welfare Fund, any one of the two Contract Years October 1, 1966 to September 30, 1967, and October 1, 1967 to September 30, 1968.

b. In order to qualify for the annual guarantee an employee must comply with all the requirements of Registration as provided herein.

c. Employees who were unable to work in all or part of the qualifying years by reason of sickness, injury, or disability, and who receive welfare benefits under the STA-ILA Welfare Plan, or who receive workmen's compensation or disability benefits under any Federal or State Law, whose absence from the industry as unable to work has been certified under the standards established by the Steamship Trade

GENERAL COUNSEL'S EXHIBIT NO. 13

AGREEMENTS

NEGOTIATED BY THE

Steamship Trade Association

of Baltimore, Inc.

For Its Members

with the

International

Longshoremen's

Association

AFL-CIO

for the

Port of Baltimore

Effective October 1, 1974

through September 30, 1977

[Union Label]

CONASA-ILA RULES ON CONTAINERS

Preamble

This Agreement made and entered into by and between the carrier and direct employer members of the CONASA Port Associations (hereinafter referred to collectively as "CONASA") and the International Longshoremen's Association, AFL-CIO ("ILA"), its Atlantic Coast District ("ACD") and its affiliated local unions in each CONASA port ("locals") covers all container work at a waterfront facility which includes but is not limited to the receiving and delivery of cargo, the loading and discharging of said cargo into and out of containers, the maintenance of containers, and the loading and discharging of containers on and off ships.

CONASA agrees that it will not directly perform work done on a container waterfront facility (as hereinafter defined) or contract out such work which historically and regularly has been and currently is performed by employees covered by CONASA-ILA Agreements, including CONASA-ILA craft agreements, unless such work on such container waterfront facility is performed by employees covered by CONASA-ILA Agreements.

RULES

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts which was performed at deepsea waterfront facilities. These rules do not have any effect on work which historically was not performed at a waterfront facility by deepsea ILA labor. To assure compliance with the collective bargaining provisions, the following rules and regulations shall be applied uniformly in all CONASA Ports to all import or export cargo in containers:

Definitions

(a) Loading a Container—means the act of placing cargo into a container.

(b) Discharging a Container—means the act of removing cargo from a container.

(c) Loading Containers on a vessel—means the act of placing containers aboard a vessel.

(d) Discharging Containers from a vessel—means the act of removing containers from a vessel.

(e) Waterfront facility—means a pier or dock where vessels are normally worked including a container compound operated by a carrier or direct employer.

(f) Qualified Shipper—means the manufacturer or seller having a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the export cargo being transported and who is named in the dock/cargo receipt.

(g) Qualified Consignee—means the purchaser or one who otherwise has a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the import cargo being transported and who is named in the delivery order.

(h) Consolidated Container Load—means a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo.

Rule 1—Containers To Be Loaded or Dicharged by Deepsea ILA Labor

(a) Cargo in containers referred to below shall be loaded into or discharged out of containers only at a waterfront facility by deepsea ILA labor:

(1) Containers owned, leased or used by carriers (including containers on wheels and trailers), hereinafter "containers", which contain consolidated container loads, which come from or go to any point within a geographic area of any CONASA port described by a 50-mile circle with its radius extending out from the center of each port (hereinafter "geographic area"), or

(2) Containers which come from a single shipper which is not the manufacturer ("manufacturer's label") into which the cargo has been loaded (consolidated) by other than its own employees and such containers come from any point within the "geographic area," or

(3) Containers designated for a single consignee from which the cargo is discharged (deconsolidated) by other than its own employees within the "geographic area" and which is not warehoused in accordance with Rule 2(B).

(b) Such ILA labor shall be paid and employed at deepsea longshore rates under the terms and conditions of the deepsea ILA labor agreement in each CONASA port, including the provisions for all fringe benefits and any and all other benefits receivable by deepsea ILA craft workers in each such Port. No cargo shall be loaded into or discharged out of any container by ILA deepsea labor more than once.

(c) All export consolidated cargo, described in 1(a)(1) and (2) above, shall be received at the waterfront facility by deepsea ILA labor and such cargo shall be loaded into a container at the waterfront facility for loading aboard ship.

(d) All import consolidated cargo, described in 1(a)(1) and (3) above, shall be discharged from the container and the cargo placed on the waterfront facility where it will be delivered and picked up by each consignee.

(e) No carrier or direct employer shall supply its containers to any consolidator or deconsolidator. No carrier or direct employer shall operate a facility in violation of the Rules on Containers which specifically require that all Rule 1 containers be loaded or discharged at a waterfront facility.

Rule 2—Containers Not To Be Loaded or Dicharged by ILA Labor

Cargo in containers referred to below shall not be loaded or discharged by ILA labor.

A. *Export Cargo:*

(1) All cargo loaded in containers outside the "geographic area".

(2) Containers loaded with cargo at a qualified shipper's facility with its own employees.

(3) Containers loaded with the cargo of a single manufacturer (manufacturer's label).

(4) Consolidated container loads of mail, household effects of a person who is relocating his place of residence, with no other type of cargo in the container, or personal effects of military personnel.

B. *Import Cargo:*

(1) All cargo discharged from containers outside the "geographic area".

(2) Containers discharged at a qualified consignee's facility by its own employees.

(3) Consolidated container loads of mail, household effects of a person who is relocating his place of business, with no other type of cargo in the container, or personal effects of military personnel.

(4) Containers of a qualified consignee discharged at a bona fide public warehouse within the "geographic area" which comply with all of the following conditions:

1. The container cargo is warehoused at a bona fide public warehouse.

2. The qualified consignee pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days; and

3. The cargo being warehoused (a) in the normal course of the business of the qualified consignee; (b) title to such goods has not been transferred from the qualified consignee to another.

The carrier on request will furnish all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2 and 3 have been met. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1. It is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a consolidator or deconsolidator.

Rule 3—Batching

When an employer-member or carrier uses a trucker to remove or deliver containers in batches, or in substantial number, from or to a terminal to another place of rest (outside of its terminal) where containers are stored pending their delivery to a consignee (or after being received from a shipper and while waiting the arrival of a ship), for the purpose of reducing the work jurisdiction of the ILA or any of its crafts, such use is deemed to be batching and an evasion of these Rules in violation of the CONASA-ILA contract.

Rule 4—Headload

Where a single qualified shipper sends an export container which contains all of his own cargo to a waterfront facility and such container is not full, the carrier or direct employer may load this container with additional cargo at the waterfront facility. On import cargo, the carrier or direct employer may discharge any such additional cargo and send the remaining cargo in the container to the qualified consignee. The loading or discharging of cargo at ILA ports shall be performed at a waterfront facility by deepsea ILA labor.

Rule 5—Overland Movement of Containers from CONASA Port to Non-CONASA Port

If a carrier moves containers from a CONASA Port to a non-CONASA Port for the purpose of evading the Rules on Containers, the carrier is in violation of the CONASA-ILA Agreement. If the cargo is being moved

to a non-CONASA-ILA Port in the normal course of business, and not for the purpose of evasion, then such movement is not a violation.

Rule 6—Importers Advertising Evasion of Rules

The circulation, in writing, by importers, of methods developed by them to evade the Rules on Containers by issuing single bills of lading on what are in fact consolidated container loads shall be deemed a violation and all CONASA-ILA Container Committees shall be advised to stop such evasion at the waterfront facilities.

Rule 7—No Avoidance or Evasion

The above rules are intended to be fairly and reasonably applied by the parties. To obtain nondiscriminatory and fair implementation of the above, the following principles shall apply:

(a) Geographic Area—Agreement in the Port to the geographic area as provided in Rule 1 is based on present consolidated movement patterns in the port. Should any person, firm or corporation for the purpose of evading the provisions of the Rules on Containers, seek to change such pattern by shifting its operations to, or commencing new opeartions at, a point outside said agreed upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of the Rules on Containers, then said point shall be deemed to be within the said geographic area for the purpose of these rules.

(b) Containers Owned, Leased or Used—Containers owned, leased or used by companies which are affiliated either directly or through a holding company with a carrier or a direct employer shall be deemed to be containers owned, leased or used by a carrier or direct employer. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the carrier or direct employer, its parent, or stockholders of either of them.

(c) Liquidated Damages—Failure to load or discharge a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of Rule 1 and Rule 2 shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been loaded or discharged under the Rules, then the carrier or its agent or direct employer shall pay, to the joint Container Royalty Fund, liquidated damages of $1,000 per container which should have been loaded or discharged. If any carrier does not pay liquidated damages within 30 days after exhausting its right to appeal the imposition of liquidated damages to the Committee provided in Rule 9(a) below, the ILA shall have the right to stop working such carrier's containers until such damages are paid.

(d) Any facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility.

Rule 8—Renegotiation and Cancellation—No Arbitration

These Rules shall be in effect for the term of the CONASA-ILA Agreement, provided, however, that either party shall have the right to cancel the Rules on Containers at any time on or after December 1, 1974, on thirty (30) days written notice of a desire to renegotiate the provisions of these Rules. Negotiations shall be held during such thirty (30) day period and if the parties are unable to agree by the end of such period, these Rules shall be deemed cancelled. Thereafter, the ILA shall have the right to refuse to handle containers and CONASA shall have the right to refuse to hire employees under the said Rules. The negotiations referred to above shall, under no condition, be subject to the grievance or arbitration provisions of any CONASA-ILA Agreement.

Rule 9—Enforcement of the Rules on Containers

To assure effective, fair and non-discriminatory enforcement of the above Rules, the following regulations shall apply:

(a) A Committee in each CONASA port represented equally by management and union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these Rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by Rule 8 hereof. A joint committee, known as the CONASA-ILA Container Committee, represented equally by management and labor and made up of representatives (to be mutually agreed upon) from each CONASA Port, namely, Boston, Rhode Island, New York, Philadelphia, Baltimore and Hampton Roads, shall meet at least quarterly each year for the purpose of insuring uniformity in the interpretation of these Rules.

(b) A Committee of carriers, together with CONASA-ILA Container Committee will develop uniform documentation which shall be required to be prepared and maintained by all carriers in order to readily identify all Rule 1 containers which are subject to loading or discharging by deepsea ILA labor. It shall be the obligation of employer-members to clearly mark each container's documentation as to whether or not it is a Rule 1 container, which shall be loaded or discharged. If a container's documentation is not clearly marked, it shall be deemed a Rule 1 container and it shall be loaded or discharged by deepsea ILA labor at the waterfront facility. With respect to all containers received at or delivered from the waterfront facility, a record of the same shall be made by ILA Checkers or Clerks. All carriers will distribute to all other carriers any and all information and devices which are being used by any person to circumvent the Rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate CONASA-ILA Container Committee and to the policing agency provided in (e) below in its port.

(c) Every import container destined to a point within 50-miles of a CONASA Port shall be delivered only on a delivery order. Every export container coming from a point within 50-miles of a CONASA Port shall be received only on a dock/cargo receipt. Such delivery orders

and dock/cargo receipts shall certify the place of delivery and origin of the container, the name or names of the person to whom the cargo is being delivered and from which it is shipped, the identity of the owner of the cargo, weight of the cargo, identity of the cargo and the origin and final destination of the container. Copies of such delivery orders and dock/cargo receipts shall be available to the local port Container Committee and the policing agency provided for in (e) below.

(d) The Container Committee in each CONASA Port shall promulgate to all carriers and direct employers, and to the Container Committes in each CONASA Port, any and all interpretations of the Rules on Containers as and when they are made. This will include uniform interpretations as and when they are issued. The CONASA-ILA Container Committee shall also promulgate uniform interpretations to local port Container Committees, as and when they are issued.

(e) Policing Agency—Each CONASA Port shall establish a method of policing and enforcing these Rules on a uniform and non-discriminatory basis. No such method shall be implemented until presented to and approved by the joint CONASA-ILA Container Committee.

Rule 10—Container Royalty Payments

The two Container Royalty payments required by the CONASA-ILA collective bargaining agreements shall be payable only once in the Continental United States. They shall be paid in that ILA Port where the container is first handled by ILA longshore labor at longshore rates. The second container royalty payment (provided by paragraph 6 of the 1971-1974 CONASA-ILA Memorandum of Agreement) shall be continued and shall be used for fringe benefit purposes only, other than supplemental cash benefits, which purposes are to be determined locally on a port by port basis. Containers originating at a foreign port which are transshipped at a United States port for ultimate destination to another foreign port ("foreign-sea-to-foreign-sea containers") are exempt from the payment of container royalties.

GC-14

TERMINALS
BALTIMORE, MD.
CHARLESTON, W. VA.
NORFOLK, VA.
PHILADELPHIA, PA.

HOUFF TRANSFER, INC.

MAIN OFFICE, P. O. BOX 91
WEYERS CAVE, VA. 24486

TERMINALS
RICHMOND, VA.
WEYERS CAVE, VA.
WHEELING, W. VA.
LYNCHBURG, VA

DATE 2-19-74 CH

PRO NO. BA 82834

SHIPPER: SAMUEL SHAPIRO & CO
EX DUNDALK MARINE TERMINAL
BALTIMORE MD
4010
SHIPPERS NO. 21477

CONSIGNEE DESTINATION: UNION CARBIDE CORP
ALLOY W VA

TRUCK NO.	TRAILER NO.	NAME OF CONNECTING CARRIER	POINT OF INTERCHANGE	THEIR PRO NO.	DATE OF THEIR BILL
310	645				

NO. PACKAGES, ARTICLES, DESCRIPTION	WEIGHT	RATE	REVENUE	PREPAID	COLLECT
19 SKIDS CALCIUM SILICIUM	41420				X
MEMO FOR DELY					

DIVISIONS	RECEIVED PAYMENT	RECEIVED ABOVE IN GOOD CONDITION
HOUFF	BY	BY W.F. Myers DATE 2/20/74

DELIVERY RECEIPT

HOUFF TRANSFER, INC.

MAIN OFFICE, P. O. BOX 91
WEYERS CAVE, VA.

TERMINALS
RICHMOND, VA.
WEYERS CAVE, VA.
WHEELING, W VA.
CHARLOTTE, N. C.
LYNCHBURG, VA.

PRO NO. BA 82834

DATE 2/14/74 CH

SHIPPER: SAMUEL SHAPIRO & CO INC AGENTS
BALTIMORE, MD.
EX DUNDALK MARINE TERMINAL
BALTIMORE, MD.
SHIPPERS NO. SN/ REF; MACP 904/N

CONSIGNEE DESTINATION: UNION CARBIDE CORP
ALLOY, W.VA.

TRUCK NO.	TRAILER NO.	NAME OF CONNECTING CARRIER	POINT OF INTERCHANGE	THEIR PRO NO.	DATE OF THEIR B/L
	407				

NO. PACKAGES, ARTICLES, DESCRIPTION	WEIGHT	RATE	REVENUE	PREPAID	COLLECT
CONTR NOS; USLU 704.0039					XX
" " " 200.8309					
CONTG 36 CS CALCIUM SILICIUM	78810				
B/L NO HARVE 4010					

DIVISIONS	RECEIVED PAYMENT	RECEIVED ABOVE IN GOOD CONDITION
HOUFF	BY DATE	BY W.F. Myers DATE 2/20/74

MAKE CHECKS PAYABLE TO HOUFF TRANSFER, WEYERS CAVE, VA. WITHIN SEVEN DAYS IN ACCORDANCE WITH SECTION 223 OF THE INTERSTATE COMMERCE ACT.
CONCEALED DAMAGE MUST BE REPORTED IN WRITING WITHIN 24 HOURS AFTER DELIVERY IS MADE.

GENERAL COUNSEL'S EXHIBIT No. 14

GENERAL COUNSEL'S EXHIBIT No. 15

UNITED STATES LINES, INC.

EQUIPMENT INTERCHANGE AGREEMENT

THIS AGREEMENT made this 18, day of March, 1970 between UNITED STATES LINES, INC., a Delaware corporation, hereinafter referred to as "lessor", and HOUFF TRANSFER INC.—corporation, hereinafter referred to as "lessee".

WITNESSETH:

WHEREAS, it is contemplated that the lessor will let and deliver to the lessee and the lessee will hire and accept from the lessor certain containers and/or chassis for transportation by the lessee over highway routes, and

WHEREAS, the parties desire to enter into an agreement concerning the use, operation and interchange of such containers and chassis:

NOW, THEREFORE, for and in consideration of the terms and conditions hereinafter set forth, it is mutually covenanted, stipulated and agreed by the parties as follows:

FIRST: The term "container" shall mean any closed container, van or box used by lessor for the carriage of goods, merchandise and cargo; and, the term "chassis" shall mean any load-carrying vehicle without power.

SECOND: Lessor shall, from time to time, deliver to lessee containers which have been placed upon lessor's chassis or containers alone without chassis for transportation upon lessee's vehicle. Containers may or may not be loaded with cargo at time of interchange or delivery between the parties. Containers or chassis shall be interchanged or delivered for transportation at lessor's terminals or at such other point or points as may be mutually agreed upon between the parties from time to time.

THIRD: At one time of interchange authorized representatives of the lessor and lessee shall make an inspection of each container and/or chassis and shall jointly execute an "Equipment Interchange Recepit and Inspection Report", a blank copy of which is appended hereto as Exhibit "A". The condition of such container and/or chassis, and any damages, defects or exceptions noted at the time such inspection is made, shall be noted on the said Equipment Interchange Receipt and Inspection Report. Each container and/or chassis shall again be carefully inspected by authorized representatives of lessor and lessee upon return and redelivery of such container and/or chassis by lessee to lessor and the condition thereof and any damages, defects or exceptions noted at the time of such return and redelivery, shall also be noted upon the original Equipment Interchange Receipt and Inspection Report. Any changes in condition, and any additional damages, defects or exceptions noted at such latter inspection shall also be noted upon an "Equipment Damage Report", to be jointly executed by authorized representatives of the lessor and lessee, a blank copy of which is appended hereto as Exhibit "B". For the purpose of determining whether a particular container or chassis has in fact been damaged between the time of delivery to lessee and return to lessor or returned to lessor with a defect or in a condition contrary to that which existed at the time of delivery thereof to the lessee, the parties to this agreement shall be bound by the aforesaid Equipment Interchange Receipt and Inspection Report and Equipment Damage Report, and, subject to the provisions hereof, lessee agrees to assume full responsibility for such damages, defects or changes of condition and shall, within fifteen (15) days after date of billing, reimburse lessor for the cost of restoring the container or chassis to its original condition, ordinary wear and tear excepted. The person (including tractor driver) receiving of delivery any container or chassis is deemed to be an authorized representative of lessee.

FOURTH: The lessee shall:

(a) complete promptly and expeditiously the use for which the containers or chassis has been furnished to it

and return the container or chassis to the terminal of the lessor from which it was received or to such other point as may be shown on the Equipment Interchange Receipt and Inspection Report or otherwise mutually agreed in writing;

(b) not permit any container or chassis to leave its custody and possession without permission of the lessor in writing, and then only to the extent of such written permission;

(c) comply with any and all appropriate formalities and requirements regarding the *use, operation or transportation of the containers or chassis;*

(d) be responsible to the lessor for the performance of this agreement by itself and by all other persons into whose possession any such container or chassis may go until its proper return to the lessor;

(e) have complete control and supervision of such containers or chassis while in its custody and possession; and shall control the detail of the work of any employee or agent operating or using said containers or chassis during such time any person operating, transporting, in possession of, or using any such container or chassis after the signing of said Equipment Interchange Receipt and Inspection Report and until such form is again signed upon return of the container or chassis to the lessor is not the agent or employee of the lessor for any purpose whatsoever; and

(f) hold the lessor harmless and reimburse the lessor for any loss of or damage to any container or chassis and hold harmless and indemnify the lessor from any and all liability for bodily injuries, death, loss, damage and expense to persons or property arising out of the use, operation, maintenance or possession by the lessee of any such container or chassis or cargo or properties carried therein during the entire period the container or chassis is not in the actual custody and possession of the lessor and shall hold harmless and indemnify the lessor from any and all responsibility and liability arising out of the damage to or loss of cargo or property carried in any such container or chassis while said container or chassis is not in the actual custody and possession of the lessor.

FIFTH: It is further agreed that:

(a) The lessor shall equip each chassis delivered to lessee with tires and if tubeless tires are not furnished, wih tubes, of proper size and which are in such condition as will permit the safe operation of the chassis. Thereafter, until such time as the chassis is returned to the lessor, repairs to the tires and tubes shall be made by and at the sole expense of the lessee. In the event of a blowout or total failure of a tire or tube, lessee shall furnish replacement tires and tubes to permit the return of the chassis to the lessor, but shall retain such replacement tires and tubes upon redelivery of the chassis to the lessor. The blown out or unserviceable tire and tube shall be returned to the lessor with the chassis. In the event that the lessee shall fail to return the blown out or unserviceable tire or tube, the lessee shall pay to the lessor the value of each such tire or tube at time or original interchange. In the absence of specified information to the contrary, it is agreed that the value of each tire at the time of original interchange is $90.00 U.S., and that the value of each tube is $10.00 U.S.

(b) In the event of mechanical failure or other failure due to defective equipment on a chassis, the lessee shall make such repairs as may be necessary; provided, however, that the lessee shall secure the approval of the lessor before making any repairs, the estimated cost of which will exceed $100.00 U.S. When the cost of such repairs as may be necessitated by mechanical failure of defective equipment is less than $25.00 U.S., the lessee shall make such repairs at its own expense. Where the cost of such repairs exceeds the sum of $25.00 U.S., the lessor shall be responsible, and shall promptly reimburse the lessee upon receipt of a bill reflecting such a payment. The aforesaid bill shall indicate in detail the nature of the repair and shall state separately the sum expended for labor and parts.

(c) Lessor shall equip each chassis delivered to lessee with such vehicle license plates and/or registration certificates as appropriate government laws or regulations may require it as chassis owner to furnish and, in addition, each chassis shall be equipped with satisfactory mud flaps, working directional signal lights, clearance markers, reflectors and such other equipment as is necessary to comply to the extent required, with pertinent government safety regulations.

(d) The lessor does not make any warranty or representation, either express or implied, as to the fitness or condition of any chassis or container or the contents thereof.

(e) At time of interchange of a loaded container under heat or refrigeration the mechanical units shall have sufficient oil and fuel to insure forty-eight (48) hours continuous operation.

(f) Fuel and oil used in providing refrigeration or heat shall be replaced by the lessee at the time a mechanically refrigerated or heated container is returned or interchanged by lessee. If lessee fails to replenish the fuel and oil supply of the refrigerated or heated container lessee shall, unless otherwise agreed upon between the parties involved be liable for and shall pay the cost of the fuel and oil consumed.

(g) When a refrigerated or heated container that has moved unpacked perishable commodities under refrigeration or heat is unloaded by lessee, it shall, unless otherwise agreed upon between the parties involved, be steam cleaned by lessee.

(h) Lessee shall be responsible for the full maintenance and repair of the diesel electric generator sets, nose mount temperature control unit including temperature recorder and thermostat, furnished in connection with containers leased hereunder. In the event a repair is necessitated by a defective part, lessor shall reimburse lessee for the reasonable cost of said part upon delivery of the defective part by lessee to lessor, provided, however, that the cost of all labor and materials other than the reimbursable cost for the defective part shall be borne by the lessee.

SIXTH: The lessor and lessee agree that the interchange of each container and chassis shall be compensated for in accordance with the Table of Charges and Schedule

attached hereto and made a part hereof. Except as otherwise provided, the terms of this agreement shall become operative with respect to the lease of the particular container and/or chassis upon the execution by the lessee of said "Equipment Interchange Receipt and Inspection Report". Settlement shall be made by the lessee within ten (10) days following the date of lessor's invoice. Daily charges shall continue to accrue, notwithstanding the fact that a container or chassis has been withdrawn from service for repairs, except in those cases in which the nature of the repair is such that the lessor is required under the terms of this agreement to bear the cost thereof. In the event of the loss of, total destruction of, or irreparable damage to a container or chassis, the daily charges shall cease as of the date of such loss, theft, destruction, or irreparable damage.

SEVENTH: The lessee agrees to keep the containers and chassis free of any and all liens and encumbrances.

EIGHTH: The lessee agrees at its sole cost and expense to keep and maintain said containers and chassis in good repair and operating condition and return the containers and chassis to lessor in the same good order and condition as when received, ordinary wear and tear excepted. In the event of damage to a container or chassis for which the lessee is responsible under terms of this agreement, the lessee shall, at its expense, restore the damaged container or chassis to a condition consistent with that condition that prevailed at the time of original interchange from lessor to lessee. In the event that the lessee shall fail to make such repairs, it shall nevertheless be responsible for the cost of such repairs and for the continued payment of daily charges until the repairs are completed even though the container or chassis may have been returned to lessor with the understanding that lessor will make the repairs.

In the event a container or chassis is lost, stolen, totally destroyed, or irreparably damaged between the time of its interchange and delivery to lessee and its return to lessor, the lessee agrees to reimburse the lessor an amount equal to the depreciated book value of said

container or chassis on the date of said loss, theft, destruction, or irreparable damage, but not less than the fair market value of said container or chassis on said date.

NINTH: This instrument and the attached Table of Charges and Schedule, the Equipment Interchange Receipt and Inspection Report and the Equipment Damage Report shall constitute and contain the entire agreement between the parties and no agreements, representations or understandings not specifically contained herein shall be binding except as contained herein or reduced to writing and made amendatory hereof.

TENTH: Either party to this agreement may terminate the same at any time by giving the other party ten (10) days written notice of such termination by registered or certified United States mail, provided, however, shall remain in effect until after all containers shall remain in effect until after all containers and chassis leased hereunder have been properly delivered to and accepted by lessor.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

WITNESSES AS TO LESSOR:

WITNESSES AS TO LESSEE:

/s/ [Illegible]
[Illegible]

UNITED STATES LINES, INC.
as Lessor

By: /s/ Robert G. Partos
ROBERT G. PARTOS
Manager, Interline

Attest:

as Lessee Hauff Transfer, Inc.

By: /s/ K. G. Munson, G.T.M.
K. G. MUNSON, G.T.M.

Attest:

TABLE OF CHARGES AND SCHEDULE OF RATES

Lessee agrees to pay lessor rental charges as set forth below for all equipment interchanged pursuant to United States Line, Inc., Equipment Interchange Agreement. Said rental charges shall accrue on a per diem basis for each period of 24 hours or fraction thereof, Saturdays, Sundays and legal holidays excepted, commencing with the second 7 a.m. after date of receipt of equipment by lessee. The per diem charges shall be as follows for the equipment indicated:

EQUIPMENT		*PER DIEM CHARGE*
Item 1	20 Foot Single Axe Chasis with 20 Foot Container	$ 2.50
Item 2	20 Foot Tandem Axle Chassis with 20 Foot Container	$ 3.50
Item 3	40 Foot Tandem Axle Chassis with with 40 Foot Container	$ 5.00
Item 4	40 Foot Tandem Axle Chassis equipped with demountable diesel driven electric generator unit, 75 gallon fuel tank, and 40 Foot Container	$15.00

It is understood and agreed betwen the parties that lessee shall pay lessor the above per diem charges in accordance with paragraph 6 of the Equipment Interchange Agreement and that such charges shall be assessed for each day, Saturdays, Sundays, and legal holidays excepted, that the container and chassis remains in the possession of lessee. Should a container and chassis be retained by lessee for a period in excess of 10 consecutive calendar days, Saturdays, Sundays and legal holidays included, the per diem charge applicable to the 11th and 12th day shall be double the amount stated herein and a charge of 3 times the normal per diem charge stated herein shall apply for every day in excess of the 12th consecutive calendar day; provided, however, that the penalty charges as stated above shall not apply on Saturdays, Sundays and legal holidays.

No. 1 9680

UNITED STATES LINES, INC.

ORIGINAL EQUIPMENT INTERCHANGE RECEIPT AND INSPECTION REPORT

VESSEL	CONTAINER NO.	CHASSIS NO.	BOGIE	TMT NO. (INTL. LIC. NO

TO CARRIER

(THIS PORTION OF REPORT IS TO BE COMPLETED AT TIME OF INTERCHANGE)

CARRIER RECEIVING CONTAINER AND/OR CHASSIS

TRACTOR NO.	LICENSE NO.	SEAL NO.

BOX (Circle One) LOADED EMPTY	GROSS WEIGHT

CONDITION OF CONTAINER AND CHASSIS

(REGULATIONS REQUIRE THAT EACH PART LISTED BE INSPECTED. IF NO EXCEPTIONS, USE CHECK (✓) MARK).

BRAKES
LANDING GEAR
WHEEL LUGS
LIGHTS
UNDERCARRIAGE
DOORS
FLAPS

TIRES	POSITION	BRAND NO. & CONDITION	POSITION
	R.O.		L.O.
	R.I.		L.I.
	R.O.		L.O.
	R.I.		L.I.

INSPECTED BY_____

DATE AND TIME

LESSEE'S REPRESENTATIVES SIGNATURE (Driver, Etc.).
RECEIVED IN GOOD CONDITION, EXCEPT AS NOTED.

FROM CARRIER

(THIS PORTION OF REPORT IS TO BE COMPLETED UPON REDELIVERY)

CARRIER REDELIVERING CONTAINER AND/OR CHASSIS

TRACTOR NO.	LICENSE NO.	SEAL NO.

BOX (Circle One) LOADED EMPTY	GROSS WEIGHT

CONDITION OF CONTAINER AND CHASSIS

(REGULATIONS REQUIRE THAT EACH PART LISTED BE INSPECTED. IF NO EXCEPTIONS, USE CHECK (✓) MARK).

BRAKES
LANDING GEAR
WHEEL LUGS
LIGHTS
UNDERCARRIAGE
DOORS
FLAPS

TIRES	POSITION	BRAND NO. & CONDITION	POSITION
	R.O.		L.O.
	R.I.		L.I.
	R.O.		L.O.
	R.I.		L.I.

IS AN EQUIPMENT DAMAGE REPORT BEING SUBMITTED HEREWITH? CHECK ONE: ☐ YES ☐ NO
IF YES, STATE REPORT NO._____

INSPECTED BY_____

DATE AND TIME

LESSEE'S REPRESENTATIVES SIGNATURE (Driver, Etc.).
DELIVERED IN GOOD CONDITION, EXCEPT AS NOTED.

ACCOUNTING CODE
SUBSIDIARY ACCOUNT [illegible]
CARRIER CODE NUMBER_____

_____
DATE OF BILLING

Total Period of Interchange		Amount Due
.....days @ $	per day	.....$.....
.....days @ $	per day	.....$.....
.....days @ $	per day	.....$.....
		.....
		$.....

Pay This Sum

[illegible]

#1 - EQUIPMENT CONTROL

RULES

(To be Printed on White Paper)

UNIFORM STRAIGHT BILL OF LADING

ORIGINAL—NOT NEGOTIABLE—Domestic

Shipper's No. .....
Agent's No. .....

.....Carrier. ..... (SCAC)

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

From .....

At ..... Street, ... City, ... County, ... State .....

, Date ....., 19..

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as shown below which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own railroad, water line, highway route or routes, or within the territory of its highway operations. Otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including those on the back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to .....

Destination ..... Street, ...

City, ... County, ... State ..... Zip .....

Routing .....

Delivering Carrier ..... Vehicle or Car Initial ..... No. .....

Collect On Delivery $..... and remit to:

..... Street ..... City ..... State

C. O. D. charge to be paid by: Shipper ☐ Consignee ☐

No. Packages	Kind of Package, Description of Articles, Special Marks, and Exceptions	*Weight (Subject to Correction)	Class or Rate	Check Column

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

.....
Signature of consignor

If charges are to be prepaid write or stamp here "To be Prepaid."

.....

Received $.....
to apply in prepayment of the charges on the property described hereon.

.....
Agent or Cashier

Per .....
The signature here acknowledges only the amount prepaid.

Charges advanced:

$.....

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ..... per .....

..... Shipper .....

Per ..... Per .....

Permanent address of Shipper: Street, ... City, ... State .....

**Recommended C. O. D. Section to be Printed in Red.

For explanation of abbreviations and reference marks, see last page of this tariff.

GC-16

RULES

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes. Except in case of carrier's negligence, no carrier or party in possession of all or any of the property herein described shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack of capacity of any highway, bridge or ferry, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect of property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection, or acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in the case of negligence, for any mistake or inaccuracy in the certificate furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damage they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in force at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular schedule, train, vehicle or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, or carrier in possession of the property when the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in the case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: PROVIDED, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered, and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time (if any) allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, or property not received, at time tender of delivery of the property to the party entitled to receive it has been made, may be at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery or other available point, or if no such warehouse is available at point of delivery or at other available point, then in other available storage facility, at the cost of the owner and there held without liability on the part of the carrier, but subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. In the event consignee cannot be found at address given for delivery, the event, notice of the placing of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other address given on the bill of lading for showing the warehouse in which such property has been placed, subject to the provisions of this paragraph.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it upon delivery, or said consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the carrier may the same at public auction to the highest bidder, at such place as may be designated by the carrier:

PROVIDED, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. PROVIDED, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: PROVIDED, That if time serves for notification to the consignor or owner the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, landing or other place at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars, vehicles or vessels or until loaded into cars, vehicles or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharfs, landings, or other places, shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels, or if property is transported in motor vehicle trailers or semi-trailers, until such trailers or semi-trailers are attached to and after they are detached from power units. Where a carrier is directed to unload or deliver property transported by motor vehicle at a particular location where consignee or consignee's agent is not regularly located, the risk after unloading, or delivery, shall be that of the owner.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

RULES

(To be Printed on White Paper)

UNIFORM STRAIGHT BILL OF LADING

ORIGINAL—NOT NEGOTIABLE—Domestic

Shipper's No. .....
Agent's No. .....

..... Carrier. ..... (SCAC)

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

From ....., Date ....., 19.....

At ..... Street, ... City, ... County, ... State .....

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as shown below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own railroad, water line, highway route or routes, or within the territory of its highway operations, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on the back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to .....

Destination ..... Street, ...

City, ... County, ... State ..... Zip .....

Routing .....

Delivering Carrier ..... Vehicle or Car Initial ..... No. .....

Collect On Delivery $..... and remit to:

..... Street ..... City ..... State

C. O. D. charge to be paid by: Shipper ☐ Consignee ☐

No. Packages	Kind of Package, Description of Articles, Special Marks, and Exceptions	*Weight (Subject to Correction)	Class or Rate	Check Column

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

.....
(Signature of consignor)

If charges are to be prepaid write or stamp here "To be Prepaid."

.....

Received $.....
to apply in prepayment of the charges on the property described hereon.

.....
Agent or Cashier

Per.....
(The signature here acknowledges only the amount prepaid)

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ..... per .....

Charges advanced:

$.....

..... Shipper ..... Agent.

Per ..... Per .....

Permanent address of Shipper: Street, ... City, ... State .....

**Recommended C. O. D. Section to be Printed in Red.

RULES

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes. Except in case of carrier's negligence, no carrier or party in possession of all or any of the property herein described shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack of capacity of any highway, bridge or ferry, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in the case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular schedule, train, vehicle or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, or carrier in possession of the property when the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in the case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: **PROVIDED,** That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered, and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time (if any) allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, or property not received, at time tender of delivery of the property to the party entitled to receive it has been made, may be kept in vessel, vehicle, car, depot, warehouse or place of business of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery or other available point, or if no such warehouse is available at point of delivery or at other available point, then in other available storage facility, at the cost of the owner and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. In the event consignee cannot be found at address given for delivery, then in that event, notice of the placing of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other address given on the bill of lading for notification, showing the warehouse in which such property has been placed, subject to the provisions of this paragraph.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it upon tender of delivery, or said consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier:

PROVIDED, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. **PROVIDED,** That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: **PROVIDED,** That if time serves for notification to the consignor or owner the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, landing or other place at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars, vehicles or vessels or until loaded into cars, vehicles or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharfs, landings, or other places, shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels, or if property is transported in motor vehicle trailers or semi-trailers, until such trailers or semi-trailers are attached to and after they are detached from power units. Where a carrier is directed to unload or deliver property transported by motor vehicle at a particular location where consignee or consignee's agent is not regularly located, the risk after unloading, or delivery, shall be that of the owner.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

.IGHT ALLOWED BASED ON AXLE SPACING

The total gross weight imposed upon the highway by a vehicle or combination shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

stance in Feet ween the Ex- remes of any roup of Axles	*Maximun Weight in Pounds on any Group of Axles*
4	32,000
5	32,000
6	32,000
7	32,000
8	33,500
9	35,000
10	36,500
11	38,000
12	39,500
13	41,000
14	42,000
15	43,000
16	44,000
17	45,000
18	46,000
19	47,000
20	48,000
21	49,000
22	50,000
23	51,000
24	52,000
25	53,000
26	54,000
27	55,000
28	56,000
29	57,000
30	58,000
31	59,000
32	60,000
33	61,400
34	62,800
35	64,000
36	65,000
37	65,800
38	66,600
39	67,400
40	68,200
41	69,000
42	70,000

PRACTICAL AXLE AND GROSS WEIGHT LIMITS

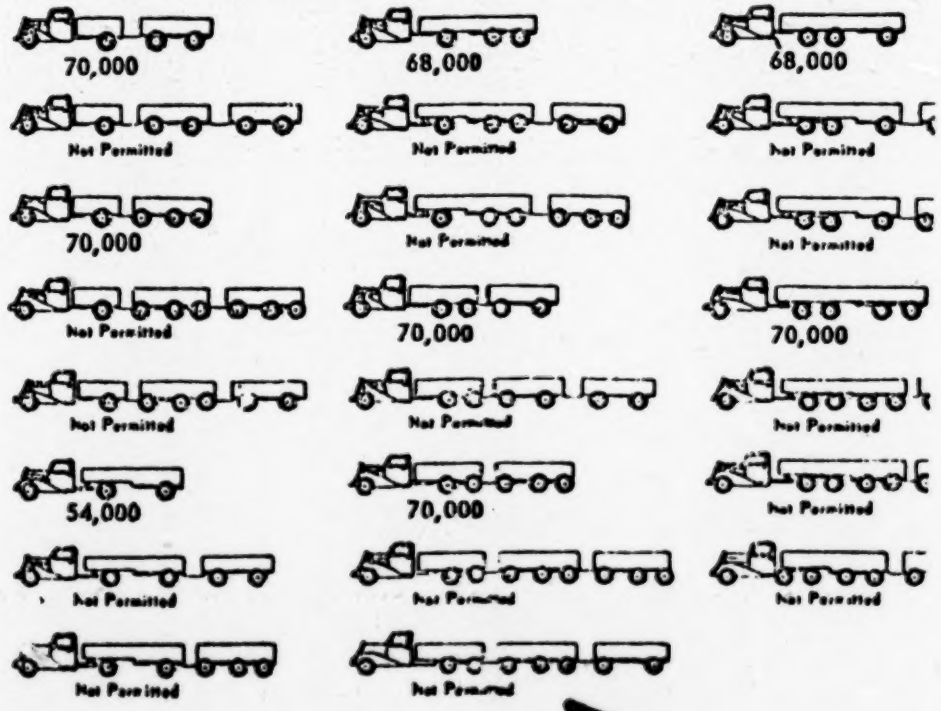
The axle limitations shown on Page 3 are the legal maximum limits. In practice it is possible to carry the same weight on the front axle as is carried on the rear axle only in the cases of those vehicles so constructed as to permit a 50-50 weight distribution between axles. Unless so constructed, therefore, the practical weight possible on a front axle will vary according to design of the vehicle.

Subject to practical axle weights, the gross weights shown below are practical.

The practical gross weight that may be carried upon any combination of units is limited by the practical gross weight that can be carried upon each unit and the axles thereof. No combination is permitted a gross weight of more than 70,000 pounds.

The maximum gross weight is determined by the distance in feet between the first and last axle of a vehicle combination except that the gross weight as determined by this distance may not exceed the sum of the legal axle weights.

LEGAL GROSS WEIGHTS PERMITTED ON FOLLOWING COMBINATIO



GA-17

GC-18

BD 8283F

FROM: SAMUEL SHAPIRO & CO., INC.
CUSTOMS BROKERS AND FORWARDERS
P. O. BOX 2035
PHONE: (301) 539-0540

BALTIMORE, MD. 21203 Feb. 14, 1974

TO Houff Transfer

WE ATTACH DELIVERY ORDER ON 11 Dundalk Marine Terminal US LINES
COVERING 2 contrs. contg. 36 cs. calcium silicium
THIS MERCHANDISE IS NOW AVAILABLE. PLEASE HAUL AT ONCE.
FREE TIME EXPIRES 5 P.M. Wed., Feb. 20, 1974 AFTER WHICH TIME THERE WILL BE STORAGE CHARGES FOR YOUR ACCOUNT.

PHONE 285-5200 PRIOR TO PICKUP TO ASCERTAIN AVAILABILITY.

Please handle in accordance with instructions of Union Carbide Corp., Alloy, W. Va.

cc: Metallurg Alloy Corp. REF# MACP 904/N

CHECK MARKS CAREFULLY. IN CASE OF DAMAGE OR DIFFICULTY AT PIER, PHONE SHAPIRO BEFORE LEAVING PIER

SAMUEL SHAPIRO & CO., INC.

OUR REF.: 21477 DETACH BEFORE PRESENTING DELIVERY ORDER

FMB Forwarders Reg. No. 69
SAMUEL SHAPIRO & CO., INC.
CUSTOMS BROKERS AND FORWARDERS
P. O. BOX 2035
BALTIMORE, MARYLAND 21203
PHONE: (301) 539-0540

Our Ref. 21477

Feb. 14, 19 74
STEAMSHIP Amer. Archer
ARRIVED 2/13/74
ENTRY NO. _____

DELIVERY ORDER

Agent or Inspector, Pier No. 11 Dundalk Marine Terminal US.LINES
Baltimore, Md.

Dear Sir:

You will please deliver to Houff Transfer
or order, the undernoted merchandise, ex the above steamer, as per permits or release tickets in your possession.

MARKS AND NUMBERS	PACKAGES	DESCRIPTION OF MERCHANDISE
Contr. Nos. USLU 204.0039 USLU 200.8309	2 contrs.	contg. 36 cs. calcium silicium
CONTAINERS CONSIGNED TO UNION CARBIDE ALLOY, W. VA.		B/L No. Havre 4010 Weight: 78,810#

TAILGATE SERVICE ONLY
STORAGE CHARGES, IF ANY, TO BE PAID BY: ☒ RECEIVERS ☐ SHAPIRO
TERMINAL HANDLING OR DOCK CHARGES TO BE PAID BY: ☒ RECEIVERS ☐ SHAPIRO
INCLUDING OPENING AND CLOSING FOR CUSTOMS

CHECK MARKS CAREFULLY IN CASE OF DAMAGE OR DIFFICULTY AT PIER. PHONE SHAPIRO BEFORE LEAVING PIER.

Yours very truly,
SAMUEL SHAPIRO & COMPANY, Inc.
Per [signature]

GENERAL COUNSEL'S EXHIBIT NO. 19

STEAMSHIP TRADE ASSOCIATION OF BALTIMORE
(INCORPORATED)

32 South Street
Baltimore, Maryland 21202
752-4913
April 2, 1974

Mr. George L. Maier
United States Lines, Inc.
P. O. Box 1775
Baltimore, Maryland 21203

Dear Mr. Maier:

RE: Container Case 6-74, Containers #USLU-200-830-9 & 204-003-9.

The above-captioned Container Case 6-74, brought about by the Union leter dated February 20, 1974, was discussed at a meeting of the Joint Container Committee on March 21, 1974, in the offices of the Steamship Trade Association.

A portion of the Union letter reads as follows:

"On Tuesday, February 19, 1974, Houff Transfer picked up Container Nos. USLU 200-830-9 & 204-003-9 for delivery to Union Carbide Alloy, W. Va. Said containers, however, were stripped at their terminal, and observed empty there on the same day."

This letter is to notify U.S. Lines, Inc., that the case against the company was resolved in favor of the Union and a fine of $2,000 was assessed since there was a violation of the cotnainer agreement. The company is hereby instructed to pay to the STA-ILA Container Royalty Fund, 218 Chamber of Commerce Building, Baltimore, Maryland, 21202, the sum of $2,000, representing the fine assessed against the containers named above, with the understanding that, as per contract language, "if the carrier does not pay the liquidated damages within

30 days . . . the I.L.A. shall have the right to stop working such carrier's containers until such damages are paid."

Very truly yours,

STEAMSHIP TRADE ASSOCIATION
OF BALTIMORE, INC.

/s/ James M. Fortune
JAMES M. FORTUNE,
Managing Director

JMF/cc

cc: Messrs. Green & Parrish

GENERAL COUNSEL'S EXHIBIT No. 20

UNITED STATES LINES, INC.
Suite 617, 16201 I Street, N.W.
Washington, D.C. 20006 (202) 785-9770

April 11, 1974

Mr. Cletus E. Houff
President
Houff Transfer, Inc.
P. O. Box 91
Weyers Cave, Virginia, 24486

Dear Mr. Houff:

Further to my letter of April 4, I wish to advise that I am now in receipt of a complete report relating to the difficulties you have encountered wtih your interchange agreement with United States Lines.

We are advised that on the shipment of two 20 foot containers destined for Union Carbide Corp. in Alloy, West Virginia, you elected for operational reasons to strip the containers in Baltimore and reload them into one of your own trailers.

This, of course, is in violation of the rules, and as a result of this action, the United States Lines was fined $2,000 by the Steamship Trade Association of Baltimore.

Under the circumstances, United States Lines had no recourse but to exclude your company from our Interchange Agreement until such time as you deem it in your best interest to satisfy our request for payment of this fine.

This matter is under the complete jurisdiction of Mr. George Maier, our Port Manager in Baltimore, and should you have any further questions, I would recommend you contact him directly.

Very truly yours,
UNITED STATES LINES, INC.
/s/ J. Daniel Smith
J. DANIEL SMITH
Special Ass't to the President

cc: E. Lamma, Walker Mfg.
G. Maier, USL, Balto.
E. Frey, Balto.
K. Edler, N.Y.

GENERAL COUNSEL'S EXHIBIT No. 21

UNITED STATES LINES, INC.
One Broadway, New York, N. Y. 10004
(212) 344-5800 Cable: Seapost

April 12, 1974

Certified Mail
Return Receipt Requested

Mr. Cletus E. Houff
Houff Transfer, Incorporated
P. O. Box 91
Weyers Cave, Virginia 24486

Dear Mr. Houff:

We received your letter of April 1st, with which you request clarification of your status as carrier handling United States Lines equipment.

I have been advised by our Baltimore office that your Baltimore terminal sometime in mid-February, picked up two 20 ft. containers from our Baltimore terminal and for their own convenience stripped these two boxes in the Baltimore terminal and transferred the loads into your equipment. This activity apparently was observed by the I.L.A. and United States Lines has been obliged to pay to the I.L.A. a fine of $2,000.

I am sure you are familiar with this case and I don't need to go into every detail. Our Baltimore office has been in touch with your Company but have been advised that Houff Transfer is not inclined to reimburse United States Lines for this fine which was incurred through actions of your personnel.

As a result of this it was decided not to permit your Company to handle our equipment.

The reason for not having advised you officially of cancellation of your Interchange Agreement, is simply that I had hoped that you would have a change of heart and

agree to reimburse us for a fine incurred through no fault of ours.

Inasmuch as no further developments have come about, please accept this letter as our ten (10) day notice as per paragraph ten (10) of the Interchange Agreement executed on March 18, 1970 between your Company and United States Lines, Inc. Unless we hear further from you indicating your willingness to settle this matter the above Interchange Agreement shall be null and void as of April 22, 1974.

I regret as to take this action but your attitude has left us no choice.

Very truly yours,

/s/ Klaus W. Edler
KLAUS W. EDLER
Manager,
Interline and Leasing

KWE:cs
cc: Mr. G. Maier
Mr. D. Schierloh
Mr. D. Smith
Mr. R. B. Murphy
Mrs. H. Sunhill

GENERAL COUNSEL'S EXHIBIT NO. 22A

UNITED STATES LINES, INC.
P.O. Box 1775 - Baltimore, Md. 21203
(301) 285-5200 - Cable: Seapost

April 16, 1974

Mr. Cletus E. Houff
Houff Transfer, Incorporated
P. O. Box 91
Weyers Cave, Virginia 24486

Dear Mr. Houff:

This will confirm our meeting of yesterday with yourself and Mr. Morgan, and pursuant thereto, please find attached copies of our files on container rules and the enforcement procedures relating to them. I direct your particular attention to the page I have marked "A, as this, in a concise outline, is the crux of our entire problem. A container when delivered from our terminal as a "house to house" unit must travel in that mode, and cannot be handled intermediately at a facility prior to arrival at it's final destination. If such a diversion does occur, no matter what the reason, the steamship company is subject to liquidated damages to the extent of $1000 per container.

I fully realize that situations do occur wherein containers might be in an overloaded condition and cannot legally move over public highways. In such situations, it then would be necessary to lighten the container, or to strip the container and deliver the contents breakbulk, at a marine facility using ILA labor, in order to preclude the imposition of any fines on the steamship carrier. Any handling of the contents of a "house to house" container, outside of ultimate handling at destination, must be done under ILA jurisdiction.

I further wish to affirm my decision to re-instate your interchange during the interim period of time until I actually pay the imposed $2000 fine on the adjudicated case. As I told you, I intend to further dispute the issue

based on a technicality, however the chances of our being able to prevail seem to be rather slim at the moment. The decision to re-instate your agreement is based on your acknowledgement of the basic violation, and your indication that you will give serious consideration to the payment of these fines should you be presented with an invoice by U. S. Lines, subsequent to our payment of such fines. Implied within this agreement would also be your concurrence that you will prevent similar incidents from occurring on any future handling of U. S. Lines containers, or else be subject again to a cancellation of our interchange arrangements.

I would like to reiterate that it was a pleasure to have met with you and to have discussed these problems which relate to our mutual interest. Should you require any additional information, or need any assistance on any other problems, do not hesitate to contact me further.

Very truly yours,

UNITED STATES LINES, INC.

/s/ George L. Maier
GEORGE L. MAIER
Port Manager

GLM:mvk

Attachments

cc: Mr. K. Deler
Mr. D. Schierloh

GENERAL COUNSEL'S EXHIBIT No. 22B

PROCEEDINGS OF THE CONASA-ILA CONTAINER COMMITTEE MEETINGS

Dublin, Ireland
January 25-29, 1973

A. PURPOSE OF THE MEETING

Folowing the meetings in Miami Beach, Florida, September 11-13, 1972, a number of issues on the Miami Beach Agenda remained unresolved.

The purpose of the meeting in Dublin, Ireland, was:

(a) To resolve such open issues; and

(b) To examine and adopt the document dated January 8, 1973, entitled "Enforcement of Rules on Containers".

B. JOINT MEETING

Joint meetings were held by the CONASA and ILA on the various days set forth above. In addition, separate caucus meetings were held by CONASA and ILA.

A general meeting was convened at 10:00 A.M. Saturday morning, January 27, 1973, at the Burlington Hotel at which approximately eighty (80) persons were present representing CONASA, the ILA, the South Atlantic and Gulf and various European ports.

The Saturday general meeting was opened by Presidents Gleason and Dickman and the Container meeting itself was chaired by Co-Chairman McEvoy and Scotto.

The first order of business was to consider and adopt the "Enforcement of Rules on Containers".

After due deliberation, the document entitled "Enforcement of Rules on Containers" was adopted by a unanimous vote of all members of CONASA and ILA Container Committee.

C. CONVENING OF SMALLER COMMITTEE

The members of the CONASA-ILA Container Committee met on the afternoon of Saturday, January 27, 1973, to consider the various unresolved items of the meeting of September 11-13, 1972. The two (2) principal issues discussed at that meeting were the questions of defining "Warehousing" and "Beneficial Owner". These two (2) definitions have been unresolved and matters of difference since the beginning of the CONASA-ILA Container Committee.

1. Warehousing

After long deliberation the Container Committee drafted a definition of "Warehousing" containing five (5) sub-paragraphs. This definition is set forth at length in the document attached to these Minutes which set forth the agreement reached by the CONASA-ILA Container Committee.

2. Beneficial Owner

The next order of business was to consider the definition of "Beneficial Owner".

The proposal of CONASA was that "Beneficial Owner" be defined as follows:

> "Beneficial Owner" is the seller, purchaser for the use or resale, or other user of the cargo in the normal course of his business, without regard to legal title, other than a trucker, forwarder, consolidator or distributor, as set forth in Rule 1(b) (or warehousemen as set forth in IV below).

The ILA members of the Committee completely disagreed with the employer definition and asserted that they desired that "Beneficial Owner" be defined as "the ultimate owner entitled to the beneficial use, enjoyment and title to the cargo". The employers did not agree with the ILA's position. It was determined that the parties would draft a document to be considered at a continuation of the Container Committee Meeting on Monday morning, January 29, 1973. Such a document was prepared by CONASA. It set forth the definition of "Beneficial Owner" as:

"The Beneficial Owner is the manufacturer, grower, seller, purchaser or ultimate owner entitled to the beneficial use, enjoyment, and title of the property. The term 'ultimate owner' refers to one using the cargo in the normal course of his business and it does not include the ultimate consumer."

Various meetings between Co-Counsel, Co-Chairmen and Presidents Gleason and Dickman were had on Sunday, January 28, 1973, in an attempt to reach a decision. The ILA's position during all of these discussions was that the employers alternative suggestions as set forth above were not acceptable to the Union which desired that the concept of "Beneficial Owner" be limited to "Manufacturers Label".

CONASA informed the Union that limiting "Beneficial Owner" to "Manufacturers Label" situations was not acceptable to CONASA.

A meeting of CONASA was held on Monday morning, January 29, 1973, to consider the impasse between CONASA and the ILA. During the course of this caucus, various other alternatives were suggested by the CONASA group and Counsel was directed to take them up with ILA Counsel, Co-Chairman Scotto and President Dickman.

One of the alternatives was the elimination of the words "manufacturer, grower, seller or purchaser". The ILA did not agree that such change satisfied their position.

The ILA suggested that before the words "ultimate consumer" in the CONASA proposal, there be added the words "broker, distributor, consolidator, forwarder, trucker, warehouseman or . . .".

The CONASA Committee was also informed by the ILA that if the matter of the difference on the "Beneficial Owner was not resolved, that the ILA would have no alternative but to reopen the Rules pursuant to Rule 3(h) because it considered the matter of "Beneficial Owner" to be crucial and could not agree to any definition of "warehousing" without an agreement on the definition of the term "Beneficial Owner". The ILA further stated that on such reopening of the Rules on Containers, they would stuff and strip all containers. After long

deliberation, the members of CONASA Container Committee voted to agree with the ILA's position. Chairman McEvoy voted against the proposal to accept the ILA's position.

A General Meeting was again convened on Monday after the CONASA Committee caucused and after the ILA Container Committee also caucused on the document defining "Warehousing" and "Beneficial Owner".

At the General Meeting, Interpretations 1.3 and 1.4 were adopted by the general CONASA-ILA Container Committee meeting. Also, at that meeting, the Committee made a determination that "Headloads" would not be deemed a violation of the Rules on Containers. This determination is described below and in Interpretation 1.5. It was also determined that the above interpretations would be effective January 29, 1973, for a three month period and would be reviewed at the May meeting of the CONASA-ILA Container Committee.

Headload

After discussion it was determined that where a single "Beneficial Owner" sends a container (either import or export) which contains all of his own cargo to a carrier through a carrier's pier and such container is not full, the carrier may chock this container with additional cargo and at arrival at another port the carrier may strip the additional cargo and send the remaining cargo to the "Beneficial Owner". The chocking or stripping at ILA ports shall be performed at a pier by deepsea ILA labor.

Effective Date

It was determined that the rules made at this meeting shall remain in effect until the next quarterly meeting at which time they shall be reviewed.

FUTURE MEETINGS

The Committee determined that the Third Quarterly Meeting of the CONASA-ILA Container Committee will be held in Hampton Roads area, May 8-9, 1973; and the Fourth Quarterly Meeting will be held in the New York area, September 11-12, 1973.

GENERAL COUNSEL'S EXHIBIT No. 22C

Submitted January 8, 1973
Adopted January 27, 1973

ENFORCEMENT OF RULES ON CONTAINERS

The following standards are hereby promulgated to assure fair and non-discriminatory enforcement of the CONASA-ILA Rules on Containers.

1. A. All outbound (export) consolidated or LTL container loads (Rule 1 containers) shall be stripped from the container at the pier by Deepsea ILA labor and cargo shall be stuffed into a different container for loading aboard ship.

1. B. All inbound (import) consolidated or LTL cargo (Rule 1 containers) for distribution shall be stripped from the container and the cargo placed on the pier where it will be delivered and picked up by each consignee.

2. No carrier or direct employer shall supply its containers to any facilities operated in violation of the Rules on Containers including but not limited to a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder who is either a consolidator or a distributor. No carrier or direct employer shall operate a facility in violation of the Rule on Containers which specifically require that all containers be stuffed or stripped at a waterfront facility (pier or dock) where vessels normally dock.

   A list shall be maintained of consolidation and distribution stations which are operated in violation of the Rules for the information of all carriers and direct employers. Any container consolidated at or distributed from such facilities shall be deemed a violation and subject to the rules on stuffing and stripping.

3. A committee of carriers, together with CONASA-ILA Container Committee will develop uniform documentation which shall be required to be prepared and maintained by all carriers in order to readily identify all Rule 1 containers which are subject to stuffing or stripping by deepsea ILA labor.

4. All carriers will distribute to all other carriers any and all information and devices which are being used by any person to circumvent the Rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate CONASA-ILA Container Committee in its port.

5. The Container Committee in each CONASA port shall promulgate to all carriers and direct employers, and to the Container Committees in each CONASA port, any and all interpretations of the Rules on Containers as and when they are made. This will include uniform interpretations as and when they are issued by the CONASA-ILA Container Committee.

6. Any facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility.

GENERAL COUNSEL'S EXHIBIT No. 22D

SECOND MEETING OF CONASA-ILA CONTAINER COMMITTEE DUBLIN, IRELAND

January 25-29, 1973

The CONASA-ILA Container Committee reached agreement on the following:

I. *DEFINITIONS*

A. *Warehousing*

A beneficial owner does not violate the Rules on Containers when he warehouses his goods in bona fide public warehouses under the following conditions:

1. The container cargo is warehoused at a bona fide public warehouse;
2. The beneficial owner pays the normal labor charges in and out, and the normal warehouse storage fees for a minimum period of thirty or more days; and
3. The cargo is being warehoused (a) in the normal course of the business of the beneficial owner (b) title to such goods has not been transferred from the beneficial owner to another, and (c) it is contemplated that such transfer of title will not take place for at least 30 days after the warehousing of the cargo. This exception shall not apply where a cargo is warehoused for the purpose of avoidance or evasion of Rule 1.
4. The beneficial owner furnishes all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2 and 3 have been met.

5. This definition is limited to containers warehoused as provided in the above conditions and warehouse which does not conform to such conditions shall be deemed a distribution station and treated accordingly.

B. *Beneficial Owner*

The beneficial owner is the ultimate owner entitled to the beneficial use, enjoyment and title of the property. The term ultimate owner refers to one using the cargo in the normal course of his business but it does not include a broker, distributor, consolidator, forwarder, trucker, warehouseman or the ultimate consumer.

II. *INTERPRETATIONS*

"Enforcement of Rules on Containers" was adopted unanimously in accordance with the draft of January 8, 1973, copy attached. It was further determined that all exchange of information, including interpretations and lists would be disseminated from the CONASA office to all CONASA-ILA Container Committees in each port.

III. *HEADLOAD*

It was determined that where a single beneficial owner sends a container which contains all of his own cargo to a carrier's pier and such container is not full, the carrier may chock this container with additional cargo and at arrival at an ILA port the carrier may strip the additional cargo with ILA labor and send the remaining cargo to the beneficial owner.

IV. The above Rules shall be effective as of January 29, 1973 and shall remain in effect until the next quarterly meeting at which time they shall be reviewed.

GENERAL COUNSEL'S EXHIBIT No. 22E

CONASA-ILA
CONTAINER COMMITTEE

80 Broad Street
New York, N.Y. 10004
(212) 943-2765

INTERPRETIVE BULLETIN No. 1

In accordance with the resolution made at the January 29, 1973, meeting of the CONASA-ILA Container Committee, directing that all interpretations be issued by the CONASA-ILA Container Committee office and promulgated to all local Port Container Committees as well as all other interested parties, Interpretive Bulletins will be issued periodically by the CONASA-ILA Container Committee for the information of all interested parties.

This document is the first such Interpretive Bulletin and sets forth the determinations reached by the CONASA-ILA Container Committee at its meetings of September 11-13, 1972, and its meetings of January 25-29, 1973.

No person or representative is authorized to issue any interpretations other than the Port Container Committees in each CONASA port subject to review by the full CONASA-ILA Container Committee in cases of conflict. The CONASA-ILA Container Committee will issue further clarifications and interpretations only at the request of members of one of the CONASA Port Associations or an official of an ILA Local Union. Interpretations and clarifications will not be issued to any party not covered by the various Collective Bargaining Agreements. Requests, in writing, for clarifications and interpretations should be addressed to the CONASA-ILA Container Committee at the above address.

The CONASA-ILA Container Committee has issued the following interpretations and definitions as of the date of this Bulletin:

INTERPRETATION 1.1

Containers Covered

The rules on containers relate solely to containers meeting either of the following criteria:

(a) Containers owned or leased by carriers (including containers on wheels) which contain LTL loads or consolidated full container loads, which come from or go to any point within a geographical area of any port in the North Atlantic District described by a 50-mile circle with its radius extending out from the center of each port.

(b) Containers which come from or go to any person (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is not a beneficial owner of the cargo and such containers come from or go to any point within a geographical area of any port in the North Atlantic District described by a 50-mile circle with its radius extending out from the center of each port.

INTERPRETATION 1.2

Batching

When an employer member or carrier uses a trucker to remove or deliver containers in batches, or in substantial number, from or to a terminal to another place of rest (outside of its terminal) where containers are stored pending their delivery to consignee (or after being received from a shipper and while awaiting the arrival of a ship), for the purpose of reducing the work jurisdiction of the ILA or any of its crafts (and when adequate physical space exists on the facility for storage of such containers), such use is deemed to be batching and is a violation of the CONASA-ILA contract.

INTERPRETATION 1.3

Warehousing

A beneficial owner does not violate the Rules on Containers when he warehouses his goods in bona fide public warehouse under the following conditions:

* * * *

2. The beneficial owner pays the normal labor charge in and out; and the normal warehouse storage fees for a minimum period of thirty or more days; and

3. The cargo is being warehoused (a) in the normal course of the business of the beneficial owner; (b) title to such goods has not been transferred from the beneficial owner to another; and (c) it is contemplated to such transfer of title will not take place for at least 30 days after the warehousing of the cargo. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1.

4. The beneficial owner furnishes all documentation and other information which permits the Container Committee in the port to determine whether contions 1, 2 and 3 have been met.

5. This definition is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a distribution station and treated accordingly.

INTERPRETATION 1.4

Beneficial Owner

The beneficial owner is the ultimate owner entitled to the beneficial use, enjoyment and title of the property. The term ultimate owner refers to one using the cargo in the normal course of his business but it does not include

a broker, distributor, consolidator, trucker, forwarder, warehouseman or the ultimate consumer.

INTERPRETATION 1.5

Headload

Where a single beneficial owner sends a container (either export or import) which contains all of his own cargo to a carrier's pier and such container is not full, the carrier may chock this container with additional cargo and at arrival at another port the carrier may strip the additional cargo and send the remaining cargo to the beneficial owner. The chocking or stripping at ILA ports shall be performed at a pier by deepsea ILA labor.

INTERPRETATION 1.6

Enforcement of Rules on Containers

The following standards are hereby promulgated to assure fair and non-discriminatory enforcement of the CONASA-ILA Rules on Containers.

1. (a) All outbound (export) consolidated or LTL container loads (Rule 1 containers) shall be stripped from the container at the pier by deepsea ILA labor and cargo shall be stuffed into a different container for loading aboard ship.

1. (b) All inbound (import) consolidated or LTL cargo (Rule 1 containers) for distribution shall be stripped from the container and the cargo placed on the pier where it will be delivered and picked up by each consignee.

2. No carrier or direct employer shall supply its containers to any facilities operated in violation of the Rules on Containers including but not limited to a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder who is either a consolidator or a distributor. No carrier or direct

employer shall operate a facility in violation of the Rule on Containers which specifically require that all containers be stuffed or stripped at a waterfront facility (pier or dock) where vessels normally dock.

A list shall be maintained of consolidation and distribution stations which are operated in violation of the Rules for the information of all carriers and direct employers. Any container consolidated at or distributed from such facilities shall be deemed a violation and subject to the rules on stuffing and stripping.

3. A committee of carriers, together with CONASA-ILA Container Committee will develop uniform documentation which shall be required to be prepared and maintained by all carriers in order to readily identify all Rule 1 containers which are subject to stuffing or stripping by deepsea ILA labor.

4. All carriers will distribute to all other carriers any and all informatioin and devices which are being used by any person to circumvent the Rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate CONASA-ILA Container Committee in its port.

5. The Container Committee in each CONASA port shall promulgate to all carriers and direct employers, and to the Container Committees in each CONASA port, any and all interpretations of the Rules on Containers as and when they are made. This will include uniform interpretations as and when they are issued by the CONASA-ILA Container Committee.

6. Any facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility.

INTERPRETATION 1.7

Overland Movement of Containers from CONASA Port to Non-CONASA Port

If a steamship line moves containers from a CONASA port to a non-CONASA port for the purpose of evading the rules on containers, the line is in violation of the CONASA-ILA Agreement. If the cargo is being moved to the non-ILA port to meet the requirements of local market conditions, and not for the purpose of evasion, then such movement is not within the rules.

INTERPRETATION 1.8

Importers Advertising Evasion of Rules

The ILA brought to the attention of CONASA that certain importers were circulating, in writing, methods developed by them to evade the rules on containers by issuing single bills of lading on what are in fact consolidated container loads of many beneficial owners. CONASA and ILA agreed that such evasion would be stopped wherever it was found.

GENERAL COUNSEL'S EXHIBIT NO. 22F

Basic rule is that containers may move without stripping by ILA labor if the containers move House to House. Any diversion to trucker, distributor, consolidator, broker, forwarder is prohibited. Use of warehouse by beneficial owner is limited as per warehouse rule. Rule applies to export and import. Use of warehousemen as distributor is specifically prohibited.

GENERAL COUNSEL'S EXHIBIT NO. 23

UNITED STATES LINES, INC.

P.O. Box 1775—Baltimore, Md. 21203
(301) 285-5200—Cable: Seapost

May 29, 1974

Mr. Cletus Houff
Houff Transfer, Inc.
P. O. Box 91
Weyers Cave, Va. 24486

Dear Mr. Houff:

Per our previous correspondence and our recent telephone conversation, please be advised that our appeal to the Container Committee has been rejected, the violation has been re-affirmed, and we have been assessed the fine of $2000 as originally stipulated.

For your reference I have attached copies of correspondence from the Steamship Trade Assoc. pertinent to this matter, as justification for our approach to you for your consideration in settling the monies involved. Also enclosed is our invoice covering the liquidated damages for the adjudicated violation.

You indicated to me, when you visited Baltimore, that you would act upon this matter when you received our invoice subsequent to the payment of the fine. Herewith, therefore, I would anticipate your response within ten days in order that further action on our part may not be necessary in order to protect the interests of U. S. Lines in our relations with Houff Transfer.

Very truly yours,

/s/ George L. Maier
GEORGE L. MAIER
Port Manager

Enclosure

INVOICE

Houff Transfer Inc.
P. O. Box 91
Weyers Cove, Va. 24486

Date May 29, 1974

Inv. No. ————

UNITED STATES LINES, INC.
DUNDALK MARINE TERMINAL
P. O. BOX 1775
BALTIMORE, MARYLAND 21203

For Container fines paid in violation of delivery of Containers:

200-830-9	
204-003-9	$2,000.00

GENERAL COUNSEL'S EXHIBIT No. 24

UNITED STATES LINES, INC.

One Broadway, New York, N. Y. 10004
(212) 344-5800 Cable: Seapost

July 12, 1974

Registered Mail
Return Receipt Requested

Houff Transfer Inc.
P. O. Box 91
Weyers Cave, Virginia 24486

Att: Mr. C. E. Houff

Dear Mr. Houff:

In light of recent developments and subsequent to discussions which were held between yourself and Mr. George Maier, Manager of our Baltimore office, this letter will serve as our notice of cancellation of Interchange Agreement between Houff Transfer and United States Lines dated 18 March 1970.

As per the tenth paragraph of the above agreement, we are hereby giving you ten (10) days written notice of termination. The above agreement will therefore be null and void as of July 22, 1974.

Termination of this agreement relieves you in no way from your obligation to return to United States Lines any and all equipment you may have in your possession be it United States Lines owned or leased equipment, neither will it effect your obligation to settle any invoices which may be outstanding at this point.

We regret having to take this action but recent events have left us no alternative.

Very truly yours,

/s/ Klaus W. Edler
KLAUS W. EDLER
Manager
Interline and Leasing

KWE:cs
cc: Mr. G. Maier/USL-BALTIMORE

GENERAL COUNSEL'S EXHIBIT No. 25

UNITED STATES LINES, INC.

P.O. BOX 3066 Norfolk, Virginia 23514
(804) 489-2800 Cable: Seapost

February 6, 1975

Mr. Frank E. Miller
General Manager
Augusta Cooperative Farm Bureau, Inc.
Route 4, Box 101A
Staunton, Virginia 24401

S/S American Ace Voy. 47
Discharged Norfolk January 5, 1975

Dear Mr. Miller:

We acknowledge your letter of January 28, returning our container demurrage invoice in the amount of $200.00. Invoice covered two containers which arrived aboard the above vessel consigned to Augusta Cooperative Farm Bureau.

A complete and thorough investigation into this invoice reveals the following:

Prior to arrival of the vessel, W. M. Stone & Co. were advised. Containers were discharged from the vessel on January 5 direct to chassis and ready to move. Customs release granted January 9. On January 10 delivery order was presented to this Office which indicated Houff Transfer as the carrier. Houff Transfer had not signed an interchange agreement with our Company, and we could not release our equipment to Houff. At 10:20 AM on January 10, W. M. Stone & Co. was advised that Houff was not acceptable and to select another carrier. Our records indicate W. M. Stone again reminded on January 13. On January 15 a second delivery order was received, indicating Wilson Trucking Corporation as carrier. Our release was then hand carried to the terminal, indicating our approval of Wilson Trucking and releasing containers.

Terminal records indicate Wilson Trucking advised on January 15 and picked up containers on January 16, 1975.

We are allowing copy of this letter to W. M. Stone & Co. and request they advise you why they delayed from Jan. 10 to Jan. 15 selecting a suitable carrier.

The tariff under which these containers moved requires us to bill and collect demurrage when containers remain on the pier beyond the free time allowed. Our actions are policed by the Consolidated North Atlantic Conferences, and we are subject to fine if we do not abide by the rules of the tariff.

We have no choice but to return our invoice to you and request payment. Container demurrage must be billed to the consignee of the merchandise.

Trust the above satisfactorily explains our position.

Very truly yours,

UNITED STATES LINES, INC.

/s/ F. W. Babb
F. W. BABB
Port Manager

FWB:ev
Att.

cc: W. M. Stone & Co.—Norfolk
Mr. J. Lee—Norfolk

UNITED ROPE (HOLLAND) DISTRIBUTORS, INC.

Baler and Binder Twine

4524 Excelsior Blvd. • Minneapolis, Minnesota 55416
Telephone (Code 612) 920-3240

December 30, 1974

JOS. URISTA. VICE PRES.

SUBSIDIARY OF
UNITED ROPEWORKS
ROTTERDAM, HOLLAND

Augusta Cooperative Farm Bureau, Inc.
Route 4, Box 101-A
Staunton, Virginia, 24401

Attention: Mr. C. C. Bowman

Dear Mr. Bowman:

Confirming our today's phone conversation, we are expecting your twine order to arrive in Norfolk about January 4th in two 40 foot containers aboard a vessel called the AMERICAN ACE. The quantities of twine in the containers are indicated below:

Container No.	No. of Bales	Type of Twine
USLU 419002-2	1,000	Excello Baler Twine (231′)
USLU 420275-6	500	Excello Baler Twine (231′)
	500	Excello Baler Twine (257′)
	50	Holland Prime Std. Binder Twine (550′)

Our customs broker in Norfolk is W. M. Stone and Company and we talked with Mr. John Strohmeyer of that company who is the man who handles our account. Mr. Strohmeyer will call Houff Transfer to haul the two containers of twine to your place of business in Staunton as soon as the twine has been cleared through U. S. Customs.

We instructed Mr. Strohmeyer to have Houff Transfer call you the day before they make delivery to you so that you are prepared to unload the twine from the containers. Twenty-four hours after the containers have been delivered, Houff will return to pick up the empty containers and return them to Norfolk. Enclosed is a copy of our order release No. 5373, the original of which we have sent to W. M. Stone and Company in Norfolk.

In accordance with our discussion, Houff will collect for the hauling charges from you. Mr. Strohmeyer says that these freight charges are expected to be the same as if the twine were not in containers. However, if the rate should be higher than normal, we authorize you to bill our company here in Mineappolis for any excess freight involved.

In the event you should want to talk with Mr. Strohmeyer, the phone number of the Stone Company in Norfolk is 804-622-3203.

Thank you very much, Mr. Bowman and please call either Mr. Strohmeyer or ourselves if any questions or problem should arise.

Very truly yours,

/s/ C. D. Kranz
C. D. KRANZ
CDK:mh

Encl.

GENERAL COUNSEL'S EXHIBIT No. 26

LAVINO SHIPPING COMPANY

32 SOUTH STREET
BALTIMORE, MARYLAND 21202

[Emblem]

Steamship Agents
Stevedores
Chartering Brokers
Terminal Operators

Cable "LAVSHIP"
All Standard Codes
Tel. 301 685-6068
TWX: 710 234-1093

Head Office
Philadelphia, Pa.

Branches
Baltimore, Md.
Norfolk, Va.
Newport News. Va.
Pittsburgh, Pa.
Wilmington, Del.

March 11, 1974

Houff Transfer Company
2720 Annapolis Road
Baltimore, Maryland 21230

Ref: M/V "NEW JERSEY MARU"
Container #A0972

Gentlemen:

The I.L.A. Container Royalty Fund has filed charges against our Principals, N.Y.K. Line, stating that on February 19th you picked up container #A0972 for delivery to Merck & Co., Elkton, Virginia. They maintain that said container was stripped by you and observed again at your terminal in the same day it was picked up. If such is the case this is a violation of the Container Agreement, and the I.L.A. is seeking liquidation damages of $1,000.00.

Please furnish us with proof of delivery of this particular container to Merck & Co. in Elkton, Virginia, and if you are unable to supply such proof and in the event penalty in the amount of $1,000.00 is assesed, we as agents for N.Y.K. Line will look to you for payment of. If you refuse to pay any penalty that might be assessed, we are suggesting to our Principals as well as other mem-

bers of the Steamship Trade Association, that your Interchange Agreement for all line services at the port of Baltimore be terminated.

Yours very truly.

LAVINO SHIPPING COMPANY

/s/ J. T. Eustace
J. T. EUSTACE
Vice President

JTE/lhd

cc: N. Y. K. Lines, Inc.
New York, New York

GENERAL COUNSEL'S EXHIBIT No. 27

LAVINO SHIPPING COMPANY

32 SOUTH STREET
BALTIMORE, MARYLAND 21202

[EMBLEM]

Steamship Agents
Stevedores
Chartering Brokers
Terminal Operators

Cable "LAVSHIP"
All Standard Codes
Tel. 301 685-6068
TWX: 710 234-1093

Head Office
Philadelphia, Pa.

Branches
Baltimore, Md.
Norfolk, Va.
Newport News. Va
Pittsburgh, Pa.
Wilmington, Del.

March 25, 1974

Houff Transfer, Inc.
P. O. Box 91
Weyers Cave, Virginia 24486

Attention: Mr. C. E. Houff
President

Ref: M/V "NEW JERSEY MARU"
Container A0972

Gentlemen:

Reference is made to your letter of March 23rd in which you said you enclosed Proof delivery as requested in our letter of March 11th. Unfortunately since it was a photostatic copy, we cannot make out the name of the receiver. It appears to be some plant, but the signature obliterated the name. Please advise the name of the plant that received these 80 drums?

Incidentally, a meeting was held at the Steamship Trade Association and at that time the Container Committee, represented by the ILA Members, stated that they went to your Terminal in Baltimore and found this container and talked to your Terminal Manager. He said

it was to move out over the road that night to its destination in Elkton, Virginia. They asked the Manager to open the container to insure that the contents were intact. According to the ILA, when it was opened it was empty. Can you refute the statement of your Terminal Manager?

Yours very truly.

LAVINO SHIPPING COMPANY

/s/ J. T. Eustace
J. T. EUSTACE
Vice President

JTE/ldh

cc: Mr. H. Bieg
Traffic Manager
N. Y. K. Line,

GENERAL COUNSEL'S EXHIBIT No. 28

STEAMSHIP TRADE ASSOCIATION OF BALTIMORE
(INCORPORATED)

32 South Street
Baltimore, Maryland 21202
752-4913

May 15, 1974

Mr. James Eustace
Lavino Shipping Co.
32 South Street
Baltimore, Maryland 21202

Dear Mr. Eustace:

RE: Container Case 5-74, NYK Lines,
Container #A0972.

The above-captioned Container Case 5-74, brought about by the Union letter dated February 20, 1974, was discussed at a meeting of the Joint Container Committee on May 10, 1974, in the offices of the Steamship Trade Association.

A portion of the Union letter reads as follows:

"On Tuesday, February 19, 1974, Houff Transfer picked up Container No. A0972 for delivery to Merck & Co., Elkton, Va. Said container, however, was stripped by Houff, and observed empty at their terminal on the same day picked up."

This leter is to notify Lavino Shipping Company that the case against the company was resolved in favor of the Union and a fine of $1,000 was assessed since there was a violation of the container agreement. The company is hereby instructed to pay to the STA-ILA Container Royalty Fund, 218 Chamber of Commerce Building, Baltimore, Maryland, 21202, the sum of $1,000, representing the fine assessed against the container named above, with the understanding that, as per contract language, "if the carrier does not pay the liquidated damages within 30

days . . . . the I.L.A. shall have the right to stop working such carrier's containers until such damages are paid."

Very truly yours,

STEAMSHIP TRADE ASSOCIATION
OF BALTIMORE, INC.

/s/ James M. Fortune,
JAMES M. FORTUNE,
Managing Director

JMF/cc

cc: Messrs. Green & Parrish

GENERAL COUNSEL'S EXHIBIT No. 29

January 16, 1975

Houff Transfer Company
2720 Annapolis Road
Baltimore, Maryland 21230

Gentlemen:

Attached is copy of a letter dated May 15, 1974 from the Steamship Trade Association of Baltimore addressed to this office as Agents for N.Y.K. Lines assessing a penalty of $1,000.00 by reason of your having picked up an N.Y.K. container #A0972 for delivery to Merck & Company, Elkton, Virginia and the stripping said container at your Terminal. This is a violation of the contract with the ILA and our principles had no choice but to pay the $1,000.00.

Upon instructions from our principals, we had no alternative but to suspend your Trailer Inter-Change Contract until such time as our principals have been reimbursed for the $1,000.00 already paid.

If there is any additional information you require, please feel free to call us.

Yours very truly,

LAVINO SHIPPING COMPANY
James T. Eustace
Vice President

JTE:dmv
Enc.

cc: Mr. Henry Bieg, N.Y.K. Lines, New York

January 16, 1975

STA-ILA Container Royalty Fund
218 Chamber of Commerce Building
Baltimore, Maryland 21202

Gentlemen:

RE: Container Case #5-74

Enclosed is our check #7443 in the amount of $1,000.00 covering the penalty assessed on the subject case.

Our principals, N.Y.K. Line, feel very strongly about paying this fine and we quite agree with them. Despite our repeated requests that when the Container Committee discovers what they believe to be a violation against one of our lines, they still do not call this office so that we can make an on-the-spot investigation.

We see no reason why this simple request can not be granted and by this letter and previous letters, want it to go on record that in all future instances we are to be notified immediately by your investigators of any suspected violation.

Your very truly,

LAVINO SHIPPING COMPANY
James T. Eustace
Vice President

JTE:dmv

Enc.

cc: Mr. Anthony A. Abato, Jr., Atty.
Mr. William J. Detweiler, S.T.A. of Baltimore
Mr. Henry Bieg, N.Y.K. Lines, New York

January 14th, 1975

Received of *LAVINO SHIPPING COMPANY*

ONE THOUSAND AND .....00/100 Dollars

PENALTY—CONTAINER CASE 5-74, NYK LINES, CONTAINER #A0972

$1,000.00

STA-ILA CONTAINER ROYALTY FUND

COPY .....

GENERAL COUNSEL'S EXHIBIT No. 30

LAVINO SHIPPING COMPANY

32 SOUTH STREET
BALTIMORE, MARYLAND 21202

[EMRLEM]

Steamship Agents
Stevedores
Chartering Brokers
Terminal Operators

Cable "LAVSHIP"
All Standard Codes
Tel. 301 685-6068
TWX: 710 234-1093

Head Office
Philadelphia, Pa.

Branches
Baltimore, Md.
Norfolk, Va.
Newport News. Va.
Pittsburgh, Pa.
Wilmington, Del.

March 3, 1975

Houff Transfer Company
2720 Annapolis Road
Baltimore, Maryland 21230

Gentlemen:

Please refer to our letter of January 22 in which we enclosed our invoice #1185M in the amount of $1,000.00 covering the penalty assessed by the I.L.A. by reason of your stripping a container in violation of their agreement. To date, we have not received your check and would appreciate your investigating and advising when payment can be expected.

Yours very truly,

LAVINO SHIPPING COMPANY

/s/ James T. Eustace
JAMES T. EUSTACE
Vice President

JTE:dmv

cc: Mr. Henry Bieg, N.Y.K. Lines, New York

GENERAL COUNSEL'S EXHIBIT No. 31

March 14, 1975

Lavino Shipping Company
Attn: Mr. James T. Eustace,
Vice President
32 South Street
Baltimore, Maryland 21202

Re: Your letter of March 3, 1975
Houff Transfer Company
2720 Annapolis Road, Baltimore, Maryland 21230

Dear Mr. Eustace:

A copy of your letter of March 3, 1975 has been forwarded to this office. It pertains to your invoice #1185M in the amount of $1,000.00. Your letter indicated that this was a penalty assessed by the I.L.A. by reason of your (Houff Transfer Company) stripping a container in violation of their agreement. I would appreciate your advising the basis on which I.L.A. assessed the $1,000.00 penalty against Houff Transfer. Your prompt reply will be appreciated.

Very truly yours,

M. BRUCE MORGAN

MBM/1f

BC: Houff Transfer, Inc.
P. O. Box 91
Weyers Cave, Va., 24486

GENERAL COUNSEL'S EXHIBIT No. 32

LAVINO SHIPPING COMPANY

32 SOUTH STREET
BALTIMORE, MARYLAND 21202

[EMBLEM]

Steamship Agents
Stevedores
Chartering Brokers
Terminal Operators

Cable "LAVSHIP"
All Standard Codes
Tel. 301 685-6068
TWX: 710 234-1093

Head Office
Philadelphia, Pa.

Branches
Baltimore, Md.
Norfolk, Va.
Newport News. Va.
Pittsburgh, Pa.
Wilmington, Del.

March 17, 1975

Mr. M. Bruce Morgan
201 Azar Building
Glen Burnie, Maryland 21061

Ref: Our letter of March 3, 1975
Houff Transfer Company
2720 Annapolis, Road, Baltimore, Maryland 21230

Dear Mr. Morgan:

Reference is made to your letter of March 14, 1975 pertaining to the subject matter. For your information we enclose copies of correspondence exchanged between this office and Houff Transfer, the Steamship Trade Association Container Royalty Fund, the attornies for the Steamship Trade Association-ILA Container Royalty Fund, all of which confirm that Lavino Shipping Company was fined $1,000.00 for a violation of the Container Agreement.

Since Houff is not a member of the Steamship Trade Association, a penalty was asessed against his office which is a member. Houff is well aware that when they pick up a container from one of our ships, that it is not to be stripped, that is its contents removed and placed in an-

other truck, but is to be delivered intact to its destinaton. Houff has been an offender in the past, and United States Lines have had the same problem with this outfit.

Since we have absolutely no control over what Houff did, and the fact that the investigators for the ILA found the empty container at Houff's Terminal the same day it was picked up from the pier we had no alternative but to pay the fine or our bond would have been charged.

We think under the circumstances, Houff should be liable for the penalty assesed against this office.

Yours very truly,

LAVINO SHIPPING COMPANY

/s/ J. T. Eustace
J. T. EUSTACE
Vice President

JTE/ldh

Enc.

GENERAL COUNSEL'S EXHIBIT No. 36

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

Preamble

The Carrier named below, owning or operating equipment for intermodal interchange service, agrees, jointly and severally, with each and all other Carrier Subscribers executing a counterpart of the Agreement, to be bound by the provisions of this Agreement and subsequent amendments or revisions thereof, governing the interchange and use of, repairs to, and settlement for, equipment used in intermodal interchange service, when interchanging equipment with other Carrier Subscribers.

This Agreement may be terminated by sixty (60) days advance notice in writing filed with the Intermodal Interchange Executive Committee.

IN WITNESS WHEREOF, this agreement has been signed this —— day of ———— 19—, by the duly authorized representative of the common carrier hereinafter designated.

Carrier: .....

By: ..... Title: .....

Business Address: .....

No. Street City

.....

County State Zip Code

Type of Organization: .....

(Individual, partnership or corporation)

If a Corporation:

State in which organized: .....

Date of incorporation: .....

If a Partnership:

Date of formation of partnership: .....

Name of all partners: .....

Certificant No. (If Applicable): .....

Accepted this ..... day of ..... 19...

By: .....

(Secretary)

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

Preamble

The Carrier named below, owning or operating equipment for intermodal interchange service, agrees, jointly and severally, with each and all other Carrier Subscribers executing a counterpart of the Agreement, to be bound by the provisions of this Agreement and subsequent amendments or revisions thereof, governing the interchange and use of, repairs to, and settlement for, equipment used in intermodal interchange service, when interchanging equipment with other Carrier Subscribers.

This Agreement may be terminated by sixty (60) days advance notice in writing filed with the Intermodal Interchange Executive Committee.

IN WITNESS WHEREOF, this agreement has been signed this —— day of ———— 19—, by the duly authorized representative of the common carrier hereinafter designated.

Carrier: .....

By: ..... Title: .....

Business Address: .....

No. Street City

.....

County State Zip Code

Type of Organization: .....

(Individual, partnership or corporation)

If a Corporation:

State in which organized: .....

Date of incorporation: .....

If a Partnership:

Date of formation of partnership: .....

Name of all partners: .....

Certificant No. (If Applicable): .....

Accepted this ..... day of ..... 19...

By: .....

(Secretary)

Return to EIA Headquarters

DEFINITION OF TERMS

Where the following terms appear in this Agreement they shall have the meaning indicated:

1. AGREEMENT

   —A term referring to this Uniform Intermodal Interchange Agreement.

2. SUBSCRIBER

   —A Carrier who is signatory to this Agreement.

3. OWNER

   —A Subscriber Carrier to whom title to equipment has been issued or who, as lessee, has the right to exclusive use of equipment.

4. EQUIPMENT

   —Trailers, containers, chassis, bogies and component parts thereof.

5. USER

   —A Subscriber Carrier in possession of equipment.

6. DELIVERING CARRIER

   —A Carrier offering equipment to another Carrier.

7. RECEIVING CARRIER

   —A Carrier accepting equipment from another Carrier.

8. USE CHARGE

   —The agreed daily rate paid for equipment.

9. INTERCHANGE POINT

   —An agreed location where two or more carriers receive and/or deliver equipment.

10. INTERCHANGE

    —The transfer of equipment from one carrier to another carrier, consummated when the equipment interchange receipt and safety inspection report form is executed by such carriers.

11. REGISTER

    —Publication containing listings of equipment accepted by the Intermodal Interchange Executive Committee.

12. INTERMODAL INTERCHANGE EXECUTIVE COMMITTEE

    —A Committee, comprised of a Secretary designated by each of the subscribing modes of transportation.

13. SECRETARY

    —Designated individual charged with prescribed duties.

PART I

TERMS AND CONDITIONS

1. GENERAL

1.1 These Terms and Conditions are formulated for the fair and proper adjustment of all questions concerning the interchange and use of, repairs to, and settlement for equipment when such equipment is interchanged between two or more modes, except when such equipment is being transported as lading. These Terms and Conditions shall not be construed as governing interchange between Carriers of the same mode, except that if any conflict shall appear between these Terms and Conditions and comparable rules governing interchange between Carriers of the same mode, these Terms and Conditions shall take precedence whenever such interchange takes place as part of an intermodal movement subject to the Agreement.

1.2 If a Subscriber interchange equipment to a non-Subscriber, the Subscriber will be responsible for the performance of all terms of this Agreement in the same manner as if the equipment were in the possession of the Subscriber.

2. ADMINISTRATION

2.1 The Subscribers consent to the establishment of an Intermodal Interchange Executive Committee to administer this Agreement.

2.2 Each mode will be represented by a Secretary.

2.3 A list of Subscribers shall be issued periodically by the Intermodal Interchange Executive Committee.

3. RECEIPTS AND REPORTS

3.1 At the time of interchange an authorized representative of each Carrier shall execute, in multiple copies as the parties may require, an equipment interchange receipt and safety inspection report form, and the parties shall be bound by the notations thereon.

4. USE OF EQUIPMENT

4.1 Responsibility of User in Possession of Equipment.

a. User shall have the right of complete and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same condition as received, ordinarly wear and tear excepted.

b. In the absence of instructions from Owner, or agreement to the contrary, when equipment in interchange service is unloaded, it will be the responsibility of the User to promptly return such equipment to Owner or to Carrier from which received at the point received.

c. The Owner or Receiving Carrier will promptly accept the return of empty equipment.

d. The cost of decontaminating equipment that has been loaded with contaminating commodities shall be the responsibility of the User who loaded, or arranged for the loading of, such equipment.

e. All dunnage, debris, etc. shall be removed prior to the return of empty equipment.

4.2 Adjustment or Transfer of Lading

a. Adjustment or transfer of lading shall be the responsibility of the Delivering Carrier:

(1) when required at point of interchange due to defective equipment which cannot be readily repaired;

(2) when due to overload in violation of Item 4, Section A, of Part II of this Agreement.

b. If the Delivering Carrier fails to adjust or transfer a lading where required Receiving Carrier may cause transfer to be made at expense of Delivering Carrier.

5. DAMAGE

5.1 In the event equipment is damaged after being received in interchange, the User in possession at the time the damage occurred shall, by repair, maintain owner's standards, and material applied must be of similar quality and type as material removed. Repairs, when completed, are subject to acceptance by equipment owner. In the event of failure of such User to make such repairs it shall, nevertheless, be responsible for the cost thereof. If the estimated cost of the foregoing repairs exceed $100, the consent of the Owner shall be obtained by the User before it causes the repairs to be made.

5.2 In the event a Subscriber delivers equipment to a Carrier not a party to this Agreement the Subscriber will be responsible to the Owner for damage to the equipment.

6. REPAIRS AND BILLING

6.1 In the event equipment shall require repairs before being accepted in interchange, Delivering Carrier shall be responsible for the cost of repairs. Receiving Carrier may cause repairs to be made and bill Delivering Carrier

for the cost thereof. If estimated cost of foregoing repairs exceeds $25, consent of Delivering Carrier shall be obtained before it causes repairs to be made.

6.2 In the event of repairs necessitated by defective equipment, User shall make such repairs as may be necessary; provided, however, that the User shall secure the approval of Owner before making any repairs, the estimated cost of which will exceed $100. When the cost of repairs necessitated by defective equipment is less than $25, the User shall make the repairs at its own expense. When the cost of repairs exceeds $25, the Owner shall be responsible for the entire cost thereof and User shall be promptly reimbursed.

6.3 Ordinary maintenance and other service adjustments occasioned by ordinary use in interchange will be:

a. Absorbed by User when cost thereof does not exceed $25.

b. Billed to and borne by Owner in entirety when cost exceeds $25.

c. Authorized by the Owner prior to commencement of repairs when estimated cost exceeds $100.

d. Billed to the Owner by User within 90 days after repairs have been completed, unless otherwise agreed upon. Billing must include owner marks or alpha code and equipment number, chassis number, date and location where repaired, and all details concerning items of repair.

6.4 Unless otherwise provided, material used in making repairs shall be charged for at current market prices, which shall be the invoice

price plus commercial freight. However, when repairs are made in commercial shops or outside repair facilities the actual amount invoiced for such material and labor must be used.

6.5 When repairs are made by User, labor shall be charged on the basis of actual time consumed in making repairs but shall not exceed prevailing labor costs.

6.6 Wrong Repairs

a. Where Owner ascertains that wrong repairs have been made, the User responsible must assume full cost of correcting wrong repairs. Owner must furnish to User a list of wrong repairs and cost estimate prior initiating corrective repairs. If User does not respond within ten (10) days after notification, informing Owner of acceptance of estimate or the name of representative authorized to make inspection of alleged wrong repairs, Owner may proceed with repairs.

b. Where serviceable material not standard to equipment is removed by Owner and, upon notification, the Carrier responsible for the wrong repairs elects to have such material returned, shipping instructions must be furnished within thirty (30) days accepting bill for freight charges (collect), otherwise, such material may be treated as scrap.

7. SETTLEMENT FOR LOST, STOLEN OR DESTROYED EQUIPMENT

7.1 In the event equipment is lost, stolen or destroyed while in possession or control of User, the User agrees to reimburse the Owner an amount equal to the depreciated book value of said equipment as of the date it was lost, stolen or destroyed.

7.2 Owner shall, within thirty (30) days after receipt of the written notification, secure and furnish to the User a written statement of the book value of the lost, stolen or destroyed equipment, including component parts.

7.3 Book value shall be the basis for fixing the value of the equipment, and of component parts, such as refrigeration units, chassis, LPG generators. Book value shall be determined for the equipment and any compent parts, less ten per cent salvage value, by utilizing the straight line depreciation method, with estimated ten (10) year life.

7.4 Settlement shall be made within sixty (60) days after User has been furnished a written statement of the depreciated book value of the equipment lost, stolen or destroyed.

8. USE CHARGES—SPECIAL APPLICATION

8.1 When equipment is damaged and reported to the Owner under Part I, 5.1 of this Agreement, use charge will cease from date of original notification until repairs are authorized or disposition furnished by Owner.

8.2 If the Owner requests equipment be sent home for repairs, User will initiate return of equipment within ten (10) days after notice is received; otherwise, use charge shall be reinstated.

8.3 Use charge shall not be paid by an intermediate User on equipment returned home under Section 8.2. Equipment moved home under this rule shall be so indicated on movement document.

8.4 If, on receipt from Owner of depreciated value, User decides to repair or send it to the Owner for repairs, the use charge shall continue from the date of original written notification to Owner as lost, stolen or destroyed.

8.5 When equipment is lost, stolen or otherwise unreported and no use charge allowed or interchange record received, claim for such use charge shall be presented to the User last in possession of the equipment.

8.6 A Subscriber to this Agreement failing to accept promptly from another Subscriber equipment billed to or via that Subscriber, shall be responsible for use charge on equipment so held for delivery. The Subscriber in possession of equipment shall notify the delinquent User daily, prior to midnight, through the designated representatives at the point where equipment is offered, of the total number of units so held for it, and within forty-eight (48) hours from midnight of the day equipment if offered, furnish the initials and number of equipment so held.

8.7 In case a party to this Agreement delivers equipment to a Carrier not a party to this Agreement, the Subscriber will be responsible for use charges.

8.8 When equipment has been reported to the Owner as lost, stolen or totally destroyed, the use charge shall cease on the date Owner is notified.

8.9 In the event that a claim presented by the Owner is not adjusted and no use charge allowed or interchange record received subsequent to the period of the claim, the Owner shall present a bill for the depreciated value of the equipment to the User last reported as having received it. Such a bill may be presented only after six (6) months from the last day of the month in which use of the equipment was reported. The User bill will be responsible to the Owner for use charge up to the date of the statement.

8.10 Settlement of bill referred to in Section 8.9 shall be made within thirty (30) days from the date of presentation. However, in the event equipment is restored to serviceable condition prior to the expiration of this thirty (30) day period, the Owner shall accept use charge from the User billed from the date of original interchange receipt and cancel his statement.

9. USER LIABILITY FOR THIRD PERSONS OR THEIR PROPERTY

9.1 The User, while in possession of interchange equipment, releases and agrees to defend, indemnify and hold harmless the Owner, and any providing or intermediate Carrier furnishing said equipment, from and against any and all loss, damage, liability, cost or expenses suffered or incurred by the Owner, and any providing or intermediate Carrier, arising out of or connected with injuries to or death of any persons or loss of or damage to property of other persons arising out of the User's use, operation, maintenance or possession of interchange equipment.

9.2 Insurance

a. A Subscriber shall have in effect, and attached to its policy of liability insurance, a Uniform Endorsement covering its legal liability, including any liability assumed under the provisions of 9.1, with limits of no less than $250,000/$500,000 for Bodily Injury and $250,000 for Property Damage, or single limit Bodily Injury and Property Damage of at least $1,000,000.

b. Subscribers that are self-insured and so recognized by the Interstate Commerce Commission, the Federal Maritime Commission, or other appropriate regulatory agencies,

shall comply with respect to policies of insurance in excess of self-insured limits.

10. WARRANTY

10.1 Delivering Carrier does not make any warranty or representation expressed or implied, as to the fitness or condition of the equipment interchanged, including tire and tubes, and the Carrier acquiring the use thereof does so at its own risk.

PART II

OPERATING RULES

Section A

Equipment will be accepted in intermodal interchange service provided that:

1. The name, reporting mark or alpha code and equipment number of the Owner are clearly indicated thereon. Subscriber placing equipment in interchange service whose marks do not render it possible to ascertain the Owner for purposes of this Agreement shall cause to be placed upon the equipment an owner identification and address no less than 2″ x 5″ in size located as follows:

   a. trailer/containers—rear left-hand door

   b. chassis—left side center beam adjacent to existing markings

   c. bogies/flat beds—left rear.

2. Owners of intermodal equipment have verified their reporting mark or alpha carrier code with the appropriate liaison organization to avoid the possibility of duplicate markings and to insure uniqueness.

   Note: It is strongly recommended that after reporting marks have been verified, Owners list such equipment in an appropriate register.

3. The Owner furnishes valid license plates required in State of registry.

4. Equipment when loaded shall not exceed manufacturer's gross weight limitations which shall be marked on the unit. User may restrict size and weight of any equipment to meet clearance and highway requirements for movement over a particular route.

5. Kingpin is free of cracks or other visible flaws and is securely attached to said equipment.

6. Container equipment must be secured to chassis or bogie according to safety requirements of receiving carrier.

7. Accessories and Special Equipment

   7.1 All wheeled equipment has the following accessories:

   a. The SAE-ATA Recommended (7-Conductor) Electrical Connector Plug.

   b. Flashing turn signals with not less than 12 square inches of lens surface.

   c. Stop lights, tail lights, clearance and marker lights, mud or rain flaps, as required by appropriate governmental agencies.

   d. Tires conforming to requirements of Section B of these rules.

   e. Landing gears conforming to requirements of Section B of these rules.

8. An equipment interchange receipt and safety inspection report form is prepared by delivering carrier specifying the description and number of removable items accompanying equipment, such as, but not limited to:

   a. Chains, binders and cables

   b. Tarpaulins (except expendable type), including securements

   c. Tarpaulin bows

d. Spreader bars or tie rods

e. Bulkheads, bulkhead boards, and load restraining devices

f. Sides, gates, sections or end doors

g. Mounted spare tire

h. Auto transport equipment such as skids, retainer pins, stands, tie down chains, cables and hooks.

9. When loaded open top equipment is offered in interchange and is equipped with tarpaulins and bows, the tarpaulins and bows must be in their proper position with tarpaulin spread and secured. In the event tarpaulin and bows are not used, they must be placed in proper storage.

10. When empty open top or platform type equipment is offered in interchange and is equipped with tarpaulin and bows, side and end gates, etc., the tarpaulin and bows, side and end gates must be in proper place with tarpaulin spread and secured.

Note: It is recommended that tarpaulins used in interchange service carry Owner's identification.

Section B

CONDITIONS GOVERNING COMPONENTS OF EQUIPMENT

1. Tires and Tubes

1.1 The Delivering Carrier shall determine that tires and tubes are of proper size at the time of interchange. Thereafter, until equipment is returned to the Owner, repairs to tires and tubes shall be made by and at the expense of the User at the time of such tire or tube failure. At the time of interchange of equipment, the tires thereon shall be thoroughly inspected by Receiving Carrier:

a. To determine if properly mated.

b. To determine major defects, such as:

(1) Separation of caps

(2) Visible blisters

(3) Obvious signs of rim wear

(4) Visible objects protruding from tire, such as nails, bolts, spikes

c. To determine that tires contain at least sufficient tread to comply with appropriate governmental safety regulations.

1.2 Any deficiency noted by inspection shall be corrected by the Owner or by the Delivering Carrier prior to acceptance for interchange use.

1.3 At time of inspection there shall be recorded on the equipment interchange receipt and safety inspection report the time owner's name and number, if any, or manufacturer's name, and location of tire on the equipment.

1.4 User shall provide good maintentnce to tires and tubes, including proper inflation, repair of flat tires, pulled valve stems, etc.

1.5 In the event of a blowout and/or total failure of a tire and/or tube, replaced by other than the Owner, the replacement shall be properly mated and of similar quality and value and report of such replacement must be made to Owner showing size, ply, brand and serial numbers of tires removed and applied. If tire or tube is ruined as a result of being run flat or otherwise abused, it will be the responsibility of the User to replace or pay for the tire or tube so ruined, otherwise replacements of tires shall be the expense of the Owner.

1.6 An unserviceable tire for which the Owner is charged, shall be held by the User for

thirty (30) days after notifying the Owner of such unservicability. In the event Owner requests return of such tire, it shall be returned by User to the point and in the manner designated by Owner. Cost of such return transportation shall be paid initially by Owner. In the event such a tire is returned which became unserviceable by being run flat or otherwise abused, Owner shall be reimbursed for such transportation cost by User.

Note: It is recommended that Owners mark all tires on both sides. The marking should be placed immediately after the manufacturer's name or in the branding area provided on the tire.

2. Landing Gears

2.1 At time of interchange landing gear must be complete as to component parts, properly secured to equipment and in suitable condition to properly support load.

2.2 User in possession of equipment shall provide required maintenance service to landing gear, including minor repairs and lubrication.

3. Refrigeration and Heating

3. At the time of interchange a vehicle equipped with mechanical refrigeration unit shall have marked adjacent to the fuel tank the type of fuel required to drive unit and capacity of fuel tank.

3.2 At time of interchange of a loaded vehicle under heat or refrigeration, interior air of vehicle will be at the required temperature. The mechanical unit shall be in satisfactory operating condition and shall have sufficient oil, and the fuel tank filled to capacity.

3.3 Owner shall protect the liquid cooling system of mechanical unit against freezing damage by

application of sufficient permanent anti-freeze solution to prevent freezing at temperature not less than minus 20 degrees F. Type of solution and degree of protection afforded shall be shown on tag attached securely to unit.

3.4 User shall be responsible for further protecting the mechanical unit where temperature lower than the above minimum may occur while in its possession. In furnishing this protection the same type of solution shall be added to unit and the information tag shall be corrected to show the new temperature protection.

3.5 Fuel used to operate portable unit in either heat or refrigeration service shall comply with all requirements of the carriers or regulatory agencies involved in the movement. Type and location of portable unit shall be designated by delivering carrier.

3.6 User shall provide proper maintenance to the heating and refrigeration unit when vehicle contains commodities requiring temperature control.

3.7 User shall return refrigeration equipment with fuel tanks filled to capacity, or reimburse Owner for the cost of fuel consumer.

PART III

SETTLEMENT OF DISPUTES

Preamble

When Subscribers are unable to agree on the settlement of a dispute respecting repairs to equipment, or its maintenance or use, or rules and regulations pertaining thereto, the party or parties involved have the right or rights to handle such disputes—1) Trough a court of law, or 2) Through process of arbitration under this Agreement.

1. Arbitration Structure

1.1 An Arbitration Panel consisting of five (5) members from each mode shall be established by the Intermodal Interchange Executive Committee. A current list of all Arbitration Panel members shall be made available to Subscribers by the Secretary.

1.2 The Arbitration Committee shall consist of three(3) members selected from the Arbitration Panel, to be arranged by the Secretary representing the carrier mode initiating arbitration.

1.3 To submit a dispute to arbitration each side will appoint one member from the intermodal Arbitration Panel and the two thus appointed shall select a third neutral member; provided, however, that the parties to the dispute, upon notification to the Secretary, may arrange for the selection of arbitrators from sources outside the intermodal Arbitration Panel.

1.4 When three (3) modes are involved in a dispute, the Secretary from each mode shall select a member from the Arbitration Panel.

2. Arbitration Procedures

2.1 The Subscriber initiating arbitration, the Complainant, shall prepare, a Statement of Facts consisting of not more than three(3) typewritten pages, letter size, single space, to be signed by all parties to the dispute. Such Statement of Fact should make reference to each question about which decision is desired. Supporting documents should accompany such Statement of Facts.

2.2 If the parties cannot agree on such Statement of Facts, each may submit a separate signed Statement not exceeding three(3) pages in in length. Each such Statement shall indicate therein that a copy has been served on all

other parties to the dispute. The original copy of each such Statement shall be forwarded to the Complainant for inclusion in in the Arbitration Dispute File.

2.3 The Complainant shall prepare a Summary Statement, setting forth his position, and request for such decision as is deemed appropriate. A copy of such Statement shall be sent by the Complainant to each other party involed in the arbitration and the Statement shall indicate therein that a copy has been so served. The original copy of such Statement shall be included in the Arbitration Dispute File.

2.4 To promote orderly and efficient use of the Dispute File, all papers shall be numbered consecutively, begining with No. 1 on the first paper which shall be the agreed Statement of Facts, or Separate Statement of Facts, followed by No. 2 which shall be the Complainant's Summary Statement, provided in paragraph 2.3. Numbers shall be placed in the upper right corner of each page, and the File shall be presented in a neat condition.

2.5 The entire Dispute File, including a filing fee of $100.00 shall then be submitted by Registered Mail to the Secretary of Complainant's mode, with written request for arbitration. This transmittal shall indicate that all parties to the dispute have been served with a a copy of the written request for arbitration.

2.6 Withing twenty (20) days after service of Complainant's Summary Statement as provided in paragraph 2.3, each other party to the dispute may file a Reply, answering Complainant's Summary Statement, by registered mail addressed to the Secretary handling the Dispute File. A copy of such Reply shall be sent to each other party to the dispute and the

Reply shall indicate therein that such copies have been so served.

2.7 If within such twenty (20) day period the parties to the dispute instead notify the Secretary in writing, with copies served on all such parties, of their willingness to reach a voluntary settlement of the dispute, arbitration will not be instituted and the filing fee shall be returned to Complainant. Similar action will result if such notice is received by the Secretary within ten (10) days after service of the Reply.

2.8 The Secretary shall assign an Arbitration Number to the Dispute File, to be transmitted to the Arbitration Committee.

2.9 Each Member of the Arbitration Committee shall review the Dispute File and, as promptly as possible, write his opinion clearly setting forth his conclusion as to proper settlement of the dispute, giving his reasons for such conclusion. He shall attach three (3) copies thereof to the Dispute File, to be transmitted to the Secretary handling the dispute. The Secretary shall remove all copies of such opinion. The Dispute File will then be sent to the second member of the Arbitration Committee, and the same procedure shall be followed until opinions have been received from all members of the Committee.

2.10 When all opinions have been received, a notice of the Arbitration Committee's decision shall be sent to each party to the dispute and to the Intermodal Interchange Executive Committee. If the decisions rendered do not resolve the dispute, the Dispute File together with the original decision of each arbitrator shall be resubmitted to the Arbitration Committee for reconsideration. If the decisions rendered as a result of reconsideration do not permit settlement of the dispute, a new Arbitration Committee will be selected to arbitrate the dispute. The original Dispute File shall be re-

record of all arbitrated disputes shall be maintained by the Intermodal Interchange Executive Committee.

2.11 A decision rendered by the Arbitration Committee, which has been concurred in by at least two members of the Committee, shall be final and binding upon the parties to the dispute.

2.12 If the arbitration award is favorable to Complainant, the equivalent of the filing fee shall be added to the award. All payments must be submitted within thirty (30) days of the decision. Expenses incurred for neutral arbitrators shall be borne by the party against whom an adverse decision has been rendered.

RULES FOR IMPLEMENTATION OF THE UNIFORM INTERMODAL INTERCHANGE AGREEMENT

I. ADMINISTRATION OF UNIFORM INTERMODAL INTERCHANGE AGREEMENT

A. For the purpose of administering the Uniform Intermodal Interchange Agreement, each mode will be responsible for appointing an individual to be designated as "Secretary". The Secretary is to be appointed by an official or governing body as prescribed in the organizational structure of each mode. The combined Secretaries will be known as the Intermodal Interchange Executive Committee.

The title "Secretary" is defined in the Terms and Conditions of the Uniform Intermodal Interchange Agreement as a "Designated individual charged with prescribed duties".

Such duties shall consist of but not limited to the following:

1. Following approval of the Uniform Intermodal Interchange Agreement by each of the modes, the designated Secretaries shall be responsible for distributing to the membership of their respective mode, blank copies of the Uniform Intermodal Interchange Agreement for the purposes of obtaining subscribers to the agreement.

2. Each modal Secretary shall be responsible for collecting the originals of the signed Uniform Intermodal Interchange Agreements submitted by his respective mode and shall deposit such agreements with an appropriate official of his mode or mode association for safekeeping. Each modal Secretary shall also be responsible for exchanging information concerning new signatories as may be required.

3. The Intermodal Interchange Executive Committee shall be responsible for maintaining a current list of the signatories to the Uniform Intermodal Interchange Agreement and shall periodically announce to the subscribers any new signatories or terminations to the Uniform Intermodal Interchange Agreement.

4. In conjunction with Item 3, the Intermodal Interchange Executive Committee shall also be responsible for disseminating to the subscribers of the respective modes a current list of all subscribers to the Uniform Intermodal Interchange Agreement issued anually and supplemented quarterly. Membership of new signatories to the Uniform Intermodal Interchange Agreement shall become effective upon publication in current list of subscribers. The initial list will be published with a closing date of May 1, 1973. Supplements thereto will be issued on a quarterly basis. Applications received after scheduled closing date will become effective with the next Supplement. Signatories to the Uniform Intermodal Interchange Agreement shall be listed by separate mode. Such listing to include corporate name, address, and responsible office.

II. PROPOSED PROCEDURES TO BE USED IN HANDLING REQUESTS FOR INTERPRETATIONS OR REQUESTS FOR REVISING THE RULES OF THE UNIFORM INTERMODAL INTERCHANGE AGREEMENT

A. At the present time, the provisions of the proposed Uniform Intermodal Interchange Agreement are silent with regard to the method subscribers should use to obtain an interpretation of a specific rule and/or ruling on a specific case. The agreement is also silent with regard to the maner in which subscribers can submit suggested changes to existing rules. Undoubtedly, once the Uniform Intermodal Interchange Agreement is implemented, such requests will be submitted and and it is felt desirable that guidelines be established in order that such requests are handled uniformily.

In order that requests such as those outlined in the previous paragraph can be given proper attention, initial consideration of a dispute or requested interpretation will be handled by the Secretary(s) of the mode(s) involved. Should a ruling rendered by the Secretary(s) not be accepted by the subscriber(s) involved, an Intermodal Review Board will be appointed consisting of the Secretaries and two (2) additional representatives from each mode. A quorum will consist of of at least two (2) representatives from each mode. If a meeting is held, an equal number from each mode is eligible to vote.

The Intermodal Review Board will either confirm the ruling of the Secretary(s) or render a

new ruling or decline comment. If the Board's action has not resolved the matter, the subscriber(s) involved may submit the matter to formal arbitration. Modal Secretaries will give due consideration to the establishment of appropriate filing fees for matters considered by the Intermodal Review Board.

B. The following guidelines are also suggested for submitting requests for interpretations and/or informal rulings:

1. Interpretation of a Rule and/or informal ruling on a specific case (when formal arbitration is not desired).

   a. Ten (10) copies of all pertinent related information associated with the matter in question must be furnished to the Secretary of the mode initiating the request. In addition, one copy of such material is to be furnished to each subscriber involved. Such request must make specific reference to the Rule or Rules involved.

2. Requests for Revision of existing Rules or submission of new Rules to the Uniform Intermodal Interchange Agreement.

   a. For the purpose of considering requests for changes, revisions and additions to the rules of the Uniform Intermodal Interchange Agreement, the Intermodal Review Board as outlined in Item 2a shall be responsible for handling such matters. Following approval, the Intermodal Review Board will submit report covering the approved changes, revisions and additions to the Secretary of each mode for the necessary circulation within the modes.

   (Meetings of the Intermodal Review Board will be held at least annually) It is agreed that revision of existing rules to the Uni-

form Intermodal Interchange Agreement will be deferred until May 1, 1974.

III. FORMAL ARBITRATION—SETTLEMENT OF DISPUTES

Under no contions will the procedures outlined in Part II abrogate the right of any subscriber to submit any dispute to arbitration as provided in the basic agreement.

GENERAL COUNSEL'S EXHIBIT NO. 37

SUBSCRIBERS

to the

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

Published by

EQUIPMENT INTERCHANGE ASSOCIATION

Agent for

INTERMODAL INTERCHANGE EXECUTIVE COMMITTEE

Effective October 15, 1975

NOTICE

All communications concerning the Uniform Intermodal Interchange Agreement should be directed to the Intermodal Interchange Executive Committee.

Motor Carrier Subscribers should direct their inquiries to:

Kenneth R. Hauck
1616 "P" Street, N.W.
Washington, D.C. 20036

Water Carrier Subscribers should direct their inquiries to:

John K. Cunningham
67 Broad Street
Room 2400
New York, N.Y. 10004

Railroad Carrier Subscribers should direct their inquires to:

A.T. Perticari
1920 "L" Street, N.W.
Room 312
Washington, D.C. 20036

LIST OF SUBSCRIBERS

The carriers named below have subscribed to, and their interchange relationships are to be governed by, the terms and conditions of the Uniform Intermodal Interchange Agreement, a copy of which has been provided to each subscribing carrier.

Copies of Agreements signed by motor carrier subscribers are on file at the office of the Equipment Interchange Association, 1616 "P" Street, N. W., Washington, D. C. 20036. Agreements signed by water carrier subscribers are on file at the office of the Steamship Operators Intermodal Committee, 67 Broad Street, Room 2400, New York, New York 10004. Agreements signed by railroad carrier subscribers are on file at the office of the Association of American Railroads, 1920 "L" Street, N. W., Washington, D. C. 20036.

ALPHA CODE	NAME AND ADDRESS OF SUBSCRIBERS	AGREEMENT EXECUTED
	MOTOR CARRIER SUBSCRIBERS	
AAAO	AAA Air Express, 145-03 156th Street, Jamaica, New York 11434 (Office of the Vice President)	8-29-75
ACTS	A. C. Trucking Service, Inc., 3 West 1st. Street, Clifton, New Jersey 07011 (Office of the President)	4-29-74
ACIQ	A.C.I. Service, Inc., Bush Term. Bldg. 56 1/2 - Ft. 48th St., Brooklyn, New York 11232 (Office of the President)	9-4-75
ADSO	ADS Trucking, Inc., 293 South Broadway, Hicksville, New York 11801 (Office of the President)	8-29-75
AEFS	A.E.F. Selover Transportation, Inc., 393 Old Bridge Turnpike, South River, New Jersey 08882 (Office of the Vice President - Secretary)	8-15-75
AGCQ	AG Container Repair Company/AG Services, Route 169 & Pulaski Street, Bayonne, New Jersey 07002 (Office of the Partner)	9-15-75
ANRC	A.N.R. Trucking Co., Inc., 518 West 29th Street, New York, New York 10001 (Office of the President)	8-1-73
APAC	A-P-A Transport Corp., 2110-88th Street, North Bergen, New Jersey 07047 (Office of the Vice President - Sales & Traffic)	9-10-75
AREI	AR-EM Trucking Company, 154 Attorney St., New York, New York 10002 (Office of the President)	8-28-75
ABLT	Able Trucking Co. Inc., 615 Industrial Road, Carlstadt, New Jersey 07072 (Office of the Terminal Manager)	9-15-75
ACHT	T. Achenberg Trans. Co., 208 Sheridan Street, Perth Amboy, New Jersey 08861 (Office of the Secretary)	5-25-73
ACCE	Acme Carriers, Inc., 216-3rd Street, Brooklyn, New York 11215 (Office of the President)	2-26-74
ATIO	Action Trucking Corp., Bush Terminal Bldg. 58, Foot of 50th Street, Brooklyn, New York 11232 (Office of the Treasurer)	9-10-75
ASTI	Active Storage & Transport Co., 1060 Bay Avenue, Elizabeth, New Jersey 07201 (Office of the President)	8-11-75
AMMF	Admiral-Merchants Motor Freight, Inc., 215 South 11th St., Minneapolis, Minnesota 55403 (Office of the Traffic Manager)	8-24-73
AKNS	Aikins, Bob, Lines, Inc., P. O. Box 264, Lawrenceburg, Indiana, 47025 (Office of the Traffic Manager)	4-3-73
AFGT	Airfreight Transportation Corp., 333 North Henry Street, Brooklyn, New York 11222 (Office of the Sect.-Treas.)	6-1-73
AJAX	Ajax Transportation Co., Inc., 485 Harrison Ave., Boston, Mass. 02118 (Office of the President)	7-9-73
AKER	Akers Motor Lines, Inc., P. O. Box 10303, Charlotte, N. C. 28201 (Office of the Secretary-Treasurer)	4-10-73
ALAE	Alamo Express, Inc., 51 Essex Street, San Antonio, Texas 78210 (Office of the Trailer Control)	3-30-73
ALAN	Alan Motor Lines, Inc., U. S. Route 1 & Lawrence St., Rahway, New Jersey 07065 (Office of the Secretary)	8-21-75
	Alexander, S., & Co. Inc., Foot of 12th Street, Jersey City, New Jersey 07302 (Office of the Exec. Vice President)	8-29-75
ALPT	All Freight Distribution Co., Inc., 1501 Thames Street, Baltimore, Maryland 21231 (Office of the President)	6-25-73
AIDS	All Island Delivery Service, Inc., 174 Cabot Street, W.Babylon, New York 17704 (Office of the Office Manager)	9-9-75
AWTO	Allwood Transportation Corp., 317 Ellison Avenue, Westbury, New York 11590 (Office of the President)	9-16-75
ALTO	Alman Trucking Corp., 153 Walworth St., Brooklyn, New York 11205 (Office of the President)	9-16-75
AMTQ	Ambassador Trucking & Leasing Corp., 56 Oak Street, Bayonne, New Jersey 07002 (Office of the President)	8-25-75
AMBE	Amber Warehouse, Inc., 110 Maltese Drive, Totowa, New Jersey 07812 (Office of the Vice President)	8-18-75
AMCI	Ameri-Cana Transport Inc., 18 Monument Square, Portland, Maine 04111 (Office of the President)	9-6-74
AMFM	American Farm Lines, P. O. Box 75410, 8125 S. W. 15th Street, Oklahoma City, Oklahoma 73107 (Office of the Treasurer)	3-20-74

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ALPHA CODE	NAME AND ADDRESS OF SUBSCRIBERS	AGREEMENT EXECUTED
	MOTOR CARRIER SUBSCRIBERS	
AFRC	American Freightways Co. Inc., 518 Porter Avenue, Brooklyn, N. Y. 11222 (Office of the Traffic Manager)	1-1-74
AMSC	Anderson Motor Service, Inc., 7525 Ravensridge Rd., St. Louis, Mo. 63119 (Office of the V. P. - Operations)	4-6-73
ADLI	Annadele Trucking Ltd., 216 Pacific Street, Brooklyn, New York 11201 (Office of the President)	7-10-74
ANTR	Antrim Transportation Co., Inc., 7-11 Suffern Place, Suffern, New York 10901 (Office of the Vice President)	8-26-75
	Archway Trucking, 15 Brady Blvd., Lake Hopatcong, New Jersey 07849 (Office of the Owner)	9-19-75
ABFS	Arkansas-Best Freight System, Inc., 301 South 11th Street, Fort Smith, Arkansas 72901 (Office of the Director of Transportation)	4-29-75
ARCC	Arrow Carrier Corporation, 160 Route 17, Rochelle Park, New Jersey 07662 (Office of the Exec. Vice President)	9-3-75
ARTI	Arrow Transportation Co., Inc., 167 Perry Street, New York, New York 10014 (Office of the Asst. to President)	8-28-75
	Asbury Graphite Mills, Inc., The, Main Street, Asbury, New Jersey 08802 (Office of the Traffic Manager)	3-7-74
ATIT	Associated Transport (Managed by Eastern Freightways, Inc.), P. O. Box 23, Carlstadt, New Jersey 07072 (Office of the Secretary)	9-3-75
AWIQ	Astro Warehouse and Distribution, Inc., 50 Sommerset Place, Clifton, New Jersey 07012 (Office of the President)	5-15-74
	Atlas Yarn Company, 53 E. 34th Street, Paterson, New Jersey 07513 (Office of the Vice President)	9-9-75
ATTK	Atomic Trucking Corp., 25 Johnston Avenue, Jersey City, New Jersey (Office of the President)	8-25-75
AUCL	Auclair Transportation, Inc., 333 March Ave., Manchester, New Hampshire 03103 (Office of the Vice President)	4-19-73
AJCQ	Avery, J., Consolidation Whse. & Distribution, Inc., 1 Main Avenue, Passaic, New Jersey 07055 (Office of the President)	8-19-75
BNTN	BN Transport Inc., 796 South Pearl Street, Galesburg, Illinois 61401 (Office of the Director, Line Haul Operations)	5-14-73
	B&M Farms & Milling Co., Inc., R. D. 1, Pottsville, Pa. 17901 (Office of the President)	12-13-74
BANP	B & P Motor Express, Inc., 720 Gross Street, Pittsburgh, Pa. 15224 (Office of the V. P. - Operations)	4-5-73
BRTI	BR Trucking Co., Inc., 490 Greenwich Street, New York, New York 10013 (Office of the President)	8-21-75
BNSI	B & S Trucking Inc., 64 Ocean Avenue, Staten Island, New York 10305 (Office of the Vice President)	8-22-75
BATT	B & T Transportation Company, 200 Frontage Road, Boston, Massachusetts 02118 (Office of the V. P. - Traffic)	6-29-73
BABI	Babb Trucking Corp., The, 97 Union Street, Brooklyn, New York 11231 (Office of the Vice President)	8-18-75
BAGT	Baggett Transportation Company, #2 South 32nd, Birmingham, Alabama 35233 (Office of the V. P. - Operations)	7-9-73
BWEQ	Bar-Mar Warehousing Co., Inc., Pier Street, Bayonne, New Jersey 07002 (Office of the President)	6-18-73
BNST	Barnes Truck Line, Inc., 506 Mayo, P.O. Box 999, Wilson, N. C. 27893 (Office of the Traffic Manager)	11-6-74
BANR	Baron Motor Carriers, Inc., 145 Blanchard Street, Newark, New Jersey 07105 (Office of the Vice-President)	5-24-73
BARY	Barry Transportation Co., Inc., P. O. Box 147, Rutherford, New Jersey 07070 (Office of the Secretary Treasurer)	8-12-75
BTRP	Bass Transportation Co., Inc., P. O. Box 391 - Old Croton Rd., Flemington, New Jersey 08822 (Office of the President)	8-26-75
BAST	Bast, D. F., Inc., 1425 N. Maxwell Street, P. O. Box 2288, Allentown, Pa. 18001 (Office of the President)	8-1-73
BLMF	Bee Line Motor Freight, Inc., 1804 Paul Street, Omaha, Nebraska 68102 (Office of the Vice Pres. - Gen. Mgr.)	3-30-73

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	MOTOR CARRIER SUBSCRIBERS	
BNEO	Benedetto Trucking Company, Inc., 1345 Dumont Ave., Brookly, N. Y. 11208 (Office of the President)	8-15-75
BEJO	Ben-Jo General Trucking Corp., 722 Lorimer Street, Brooklyn, New York 11211 (Office of the President)	8-15-75
BDEI	Bergen Delivery Service, 125 So. Van Brunt Street, Englewood, New Jersey 07631 (Office of the President)	7-18-74
BXPI	Berlin Express Inc., 645 Spring Street, Elizabeth, New Jersey 07207 (Office of the President)	8-27-75
	Best Brands, Inc., 5700 East 39th Avenue, Denver, Colorado 80207 (Office of the President)	1-4-74
BYXP	Bestway Express, P. O. Box 77, Columbia, South Carolina 29202 Office of the President)	6-10-74
BWPQ	Bestway Transport, Inc., P. O. Box M-A, Hoboken, New Jersey 07030 (Office of the President)	3-15-74
BGRC	Big Red Chief Inc., 102 Third Street, Brooklyn, New York 11231 (Office of the President)	5-10-73
BLKY	Bilkays Express Co., 830 Old Corlies Ave., Neptune, New Jersey 07753 (Office of the Sales Manager)	5-22-73
BCXP	Blue Comet Express, Inc., 1901 Torresdale Avenue, Philadelphia, Pa. 19124 (Office of the President)	9-2-75
BLGR	Blue & Gray Transportation Co., Inc., 1111 Commerce Road, Richmond, Virginia 23224 (Office of the Traffic Manager)	4-16-73
	Bogatin, Philip F., Inc., 2011 Walnut Street, Philadelphia, Pa. 19103 (Office of the President)	8-13-75
BBOQ	Bond Brothers Trucking & Rigging Inc., 214 Middlesex Street, Harrison, New Jersey 07029 (Office of the President)	8-1▶75
BOSS	Boss-Linco Lines, Inc., 1 West Genesee Street, Buffalo, New York 14240 (Office of the V. P. of Maintenance & Terminals)	3-14-74
	Bothen Corporation, 2607 River Road, Riverton, New Jersey 08007 (Office of the President)	2-11-74
BOWR	Bower Trucking & Warehouse Co., 1101 W. 11th St., Vancouver, Wash. 98660 (Office of the Vice President)	4-16-73
BWLI	Bowling Green Storage & Van Co., 80 Herrmann Place, Yonkers, N. Y. 10710 (Office of the President)	8-14-75
BOWM	Bowman Transportation, Inc., 1500 Cedar Grove Road, Conley, Georgia 30316 (Office of the Manager - Equipment Control)	7-5-73
BWMT	Bowman Trucking Co., Inc., P. O. Box 6, Stephens City, Virginia 22655 (Office of the President)	10-30-73
BRME	Branch Motor Express, 114 Fifth Avenue, New York, New York 10011 (Office of the General Traffic Manager)	4-10-73
BRIG	Briggs Transportation Co., 2360 West County Road "C", St. Paul, Minnesota 55113 (Office of the President)	4-11-73
BRON	Bronaugh Motor Express, Inc., 1025 Nandino Blvd., Lexington, Ky. 40511 (Office of the President)	8-30-73
BUAN	Buanno Transportation Co., Inc., RD#1, Port Johnson, New York 12070 (Office of the Office Manager)	5-18-73
	Bunero's Trucking, 9526 Railroad Avenue, North Bergen, New Jersey 07047 (Office of the Owner)	9-6-75
BBRD	Burkam Brothers, Inc., 385 Route #22, Hillside, New Jersey 07205 (Office of the President)	9-9-75
BURX	Burlington Industries, Inc., 3440 Paterson Plank Road, North Bergen, New Jersey 07047 (Office of the Asst. Terminal Manager)	9-22-75
BUPQ	Burrell's Express, 852 McGrath Highway, Somerville, Mass. 02145 (Office of the President)	2-6-74
BXTI	Byrnes Express & Trucking Co. Inc., 33 Franklin Avenue, New York, New York 11205 (Office of the President)	9-8-75
BYRN	Byrns Motor Express (Division Ryder Truck Lines, Inc.), P. O. Box 22, Syracuse, N. Y. 13057 (Office of the President)	8-1-73
CBLT	C.B.L. Truck Leasing, Inc., P. O. Box 8, Delanco, New Jersey 08075 (Office of the Vice President)	8-11-75

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	MOTOR CARRIER SUBSCRIBERS	
CMRT	CMR Transportation, Inc., P. O. Box 267, Bound Brook, New Jersey 08805 (Office of the President)	5-31-73
CMTN	CMT Food Carrier, Inc., 1120 Linden Ave. E., Linden, New Jersey 07036 (Office of the President)	9-9-75
CWMT	CW Transport, Inc., 7300 W. 71st Street, Bridgeview, Illinois 60455 (Office of the Dir. of Trailer Interchange)	4-2-73
CFTS	Calore Freight System, Inc., 275 Pine Street, Seekonk, Mass. (Office of the President)	8-28-75
CALA	California Cartage Company, Inc., 20021 Susana Road, Compton, Calif. 90221 (Office of the President)	5-20-75
	Cambridge Iron & Metal Co., Inc., 2030 Aliceanna St., Baltimore, Md. 21231 (Office of the Vice President)	2-18-74
CAPM	Cap Motor Lines, Inc., 70-01-67th Place, Glendale, New York 11227, (Office of the Secretary)	7-2-73
	Capone, Albert Trucking, Inc., 233 India Street, Brooklyn, New York 11222 (Office of the President)	
	Capriglione, Joseph, Inc., 304 Reindel Place, Roselle Park, New Jersey 07204 (Office of the President)	9-23-75
CARP	Carpenter's Motor Freight, Inc., 710 South Madison Street, Wilmington, Del. 19801 (Office of the V.P.-Gen. Mgr.)	8-25-75
CFLS	Carstensen Freight Lines, Inc., Highway 30 West, (P. O. Box 878) Clinton, Iowa 52732 (Office of the Exec. Vice President)	4-10-73
CASR	Casco Services, Inc., 91 Bay Avenue, Newark, New Jersey 07105 (Office of the President)	9-11-75
CTKC	Cassways Trucking Corporation, 643 South Avenue, Garwood, New Jersey 07027 (Office of the Traffic Manager)	8-15-75
CSAT	Central Storage & Transfer Co. of Harrisburg, 3500 Industrial Rd., Harrisburg, Pa., 17105 (Office of the Vice President)	7-20-73
	Champion Spark Plug Company, P. O. Box 910, Toledo, Ohio 43661 (Office of the Vice President & Treasurer)	5-7-74
	Chanice & Chanice Transportation Inc., 854 Liberty Avenue, Brooklyn, New York 11208 (Office of the Secretary)	8-29-75
CHEK	Checker Express Company, 6801 South 13th, Milwaukee, Wisconsin 53221 (Office of the V. P. - Operations)	4-10-73
	Chelsea Warehouse Inc., 3243 Broadway, New York, New York 10027 (Office of the Manager)	9-25-75
CKCF	Chicago Kansas City Freight Line Inc., 106 West 14th Street, Suite 1200, Kansas City, Mo. 64105 (Office of the V.P.)	3-29-73
CHMI	Chimento, P., Co. Inc., 49-40 Maspeth Avenue, Maspeth, New York 11378 (Office of the Vice President-Controller)	8-18-75
CHIP	Chippewa Motor Freight, Inc., 2645 Harlem Avenue, Eau Claire, Wisconsin 54701 (Office of the Dir. of Traffic)	4-10-73
	Chester Packing Corp., 42 Brookside Avenue, Chester, New York 10918 (Office of the Vice President)	9-5-75
COFI	Cioffi Transfer, P. O. Box 623, East Brunswick, New Jersey 08816 (Office of the President)	8-21-75
CGTC	Cleveland General Transport, Inc., 1 Van Street, Staten Island, New York 10310 (Office of the Traffic Manager)	9-8-75
CLIH	Cline, Harold G., Inc., Harding Highway & DuPont Road, Penns Grove, New Jersey 08069 (Office of the President)	8-20-75
CLCI	Clinton Cartage Inc., 1500 Hudson Street, Hoboken, New Jersey 07030 (Office of the President & Secretary)	9-16-75
	Clipper Worldwide Distributors Co., Inc., 531 West 21st Street, New York, New York 10011 (Office of the President)	9-22-75
COFW	Coastal Freightways, 86 Joy Street, Somerville, Massachusetts (Office of the Manager)	9-8-75
CBTO	Cober Transfer Corp., 91 E. Peddie Street, Newark, New Jersey 07114 (Office of the Secretary)	9-18-75
	Colonial Metals Co., 217 Linden Street, Columbia, Pennsylvania 17512 (Office of the Exec. Vice President)	8-19-75
	Central Transfer Company, 1080 Springfield Road, Union, New Jersey 07083 (Office of the President)	10-2-75

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	MOTOR CARRIER SUBSCRIBERS	
CNSP	Colonial Storage Company, 6025 Kansas Avenue, N. W., Washington, D. C. 20011 (Office of the Vice President & Secretary)	2-8-74
CCCC	Colorado Cartage Company, Inc., 5275 Quebec Street, Denver, Colorado 80222 (Office of the President)	4-2-73
COMO	Commerce Consultants Corp., 850 Charles Street, Gloucester City, New Jersey 08030 (Office of the President)	3-20-74
CWAQ	Commonwealth Warehouse & Trucking, Inc., 16th & Coles Street, Jersey City, New Jersey 07302 (Office of the President)	7-16-73
CFWY	Consolidated Freightways Corporation of Delaware, 175 Linfield Drive, Menlo Park, Calif. 94025 (Office of the Vice President Transportation)	4-11-73
CDSR	Container Distribution Service, Inc., 49-40 New Maspeth Ave., Maspeth, New York 11378 (Office of the Vice President - Controller)	2-13-74
CNTI	Contrans Inc., 20 Burma Road, Jersey City, New Jersey (Office of the Manager)	9-5-75
CJTI	Cook, John, Trucking Co., Inc., 140 Peter Street, Union City, New Jersey 07087 (Office of the President)	9-9-75
COOP	Cooper-Jarrett, Inc., 23 Essex Avenue South, Orange, New Jersey 07051 (Office of the V. P. - Sales & Marketing)	8-8-74
COSM	Cossitt Motor Express, Inc., 63 West Kendrick Avenue, Hamilton, New York 13346 (Office of the Vice President)	4-2-73
CSRI	Courier Services, Inc., 34 Providence Street, Newark, New Jersey 07105 (Office of the Vice President)	8-22-75
CJMQ	Cousins, J. M., Company, Inc., P. O. Box 787, Mansfield, Ohio 44901 (Office of the President)	8-22-75
	Cousins Metal Industries, Inc., 1800 Access Road, Oceanside, New York 11572 (Office of the Vice President)	8-12-75
CRES	Crescent Motor Line, 7153 Lone Oak Road, Spartanburg, South Carolina 29302 (Office of the President)	6-5-73
CROL	Crolle Trucking Inc., 87 Dale Road, Wanaque, New Jersey 07465 (Office of the President)	8-15-75
	Curatola Bros. Trucking, Inc., 180 Atlantic Avenue, Garden City Park, New York 11040 (Office of the Secretary Treasurer)	9-10-75
CURR	Currier's Express, Inc., #30 Lowell Junction Rd., Andover, Mass. 01810 (Office of the President)	7-31-73
CUCC	Custom Cartage Company, 345 Hudson Street, New York, New York 10014 (Office of the Vice President)	9-5-75
DHLQ	Dahill Cartage Co., Inc., P. O. Box 59, Old Bethpage, New York 11804 (Office of the Vice President)	8-25-75
DAIC	Daily Express, Inc., 1076 Harrisburg Pike, Box 39, Carlisle, Pa. 17013 (Office of the Vice President - Operations)	5-19-75
DLTI	Dalbo Trucking Co. Inc., 13 Varick Street, Brooklyn, New York 11222 (Office of the Treasurer)	8-30-75
DART	Dart Transit Company, 780 North Prior, St. Paul, Minnesota 55104 (Office of the Vice President)	1-14-75
DAVT	The Davidson Transfer & Storage Co., P. O. Box 58, Baltimore, Md. 21203 (Office of the V. P. - Operations)	4-30-73
DVTQ	Davidson Trucking Company, 7 Union Street, Malden, Mass. 02148 (Office of the Owner)	6-21-73
DEXC	DeFedericis Co., Inc., 371 Schuyler Avenue, Kearny, New Jersey 07032 (Office of the President)	8-15-75
DEAT	Deaton, Inc., P. O. Box 938, Birmingham, Alabama 35201, (Office of the Vice President - Operations)	7-23-73
	Diamond Truck Leasing Corp., 190 Copiague Place, Copiague, New York 11726 (Office of the Vice President)	9-22-75
	Disco International Div., DiMattina Supply Co., Inc., P. O. Box H, Staten Island, New York 10303 (Office of the President)	9-16-75
	Domestic Sales Corp., 2320 Industrial Parkway, Elkhart, Indiana 46514 (Office of the Operations Manager)	7-25-74
DFFI	Donna Freight Forwarders, Inc., 8 No. 8th Street, Brooklyn, New York 11211 (Office of the President)	9-3-75

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	MOTOR CARRIER SUBSCRIBERS	
DORN	Dorn's Transportation Inc., Railroad Avenue Extension, Albany, N. Y. 12205 (Office of the Line Haul Manager)	6-28-73
DJTI	Dover Transfer, Inc., 159 21st Street, Brooklyn, New York 11232 (Office of the President)	9-9-75
DWNS	Downs Brothers Hauling, Inc., 3351-57 Tulip Street, Philadelphia, Pa. 19134 (Office of the President)	2-8-74
DRKE	Drake Motor Lines, Inc., 20 Olney Ave., Cherry Hill, New Jersey 08002 (Office of the Vice President)	6-30-73
DUGC	Duggan, J. C., Inc., 111 58th St., Brooklyn, New York 11220 (Office of the Vice President)	7-17-73
DMEP	Dunmyre Motor Express, Inc., P. O. Box 289, R. D. 1, Chicora, Pa., 16025 (Office of the President)	7-9-73
	E & A Trucking, Eli Avosso Trucking Co. Corp., 7506 Avenue X, Brooklyn, New York 11234 (Office of the President)	9-25-75
ENJQ	E & J Trucking Co., P. O. Box 84, Bound Brook, New Jersey 08805 (Office of the Owner)	8-25-75
EARE	Earle's Moving & Storage Co., Inc., P. O. Box 789, Annapolis, Md. 21404 (Office of the President)	8-10-73
	Eastland Wollen Mills, Inc., Main Street, Corinna, Maine 04928 (Office of the President)	8-12-75
ETMP	East Texas Motor Freight Lines, Inc., 2355 Stemmons Freeway, Dallas, Texas 75207 (Office of the Senior Vice President)	4-30-73
EETH	Eastern Express, Inc., 1450 Wabash Avenue, Terre Haute, Indiana 47808 (Office of the Vice President - Operations)	4-11-73
EFWS	Eastern Freightways, Inc., P. O. Box 23, Carlstadt, New Jersey 07072 (Office of the Secretary)	9-3-75
EAML	Eastern Motor Lines, Inc., Sigsbee Road, P. O. Box 2686, Spartanburg, S. C. 29302 (Office of the Exec. V. P. & Secretary)	3-29-73
EAZR	Eazor Express, Inc., Eazor Square, Pittsburgh, Pennsylvania 15201 (Office of the Traffic Manager)	4-2-73
ECKL	Ecklar-Moore Express, Inc., 147 S. Forbes Road, Lexington, Kentucky 40505 (Office of the V. P. - Traffic)	4-2-73
ELKC	Elk Transportation Co. Inc., 916 Grand Street, Brooklyn, New York 11211 (Office of the President)	9-25-75
ELAJ	Elliott, A. J., Motor Trans., Inc., 295 West First Street, Boston, Mass. 021127 (Office of the President)	7-16-73
ELMC	Ellis Motor Lines, Inc., P. O. Box 906--412 Oak Avenue, Torrington, Conn. 06790 (Office of the President-Treasurer)	5-30-73
ELXP	Elway Express, Inc., P. O. Box 328, Fort Wayne, Indiana 46801 (Office of the President)	5-24-73
EMTQ	Emral Trucking Corp., 8 Baker Lane, Levittown, New York 11756 (Office of the President)	9-25-75
ETCQ	Engels Trucking Corporation, 541 Kent Avenue, Brooklyn, New York 11211, (Office of the President)	8-22-73
EEAT	Enterprise Distribution, Inc., 50 Enterprise Avenue, Secaucus, New Jersey 07094 (Office of the President)	6-10-74
EPES	Epes Transport System, Inc., P. O. Box 4038 - 2403 Commerce Rd., Richmond, Virginia 23224 (Office of the Traffic Manager)	4-11-73
ERDB	Erdner Bros., Inc., Fow & Leahy Avenues, Swedesboro, New Jersey 08085 (Office of the President)	5-24-73
EVRT	Everett Express, Inc., 3201 South Military Highway, Chesapeake, Virginia 23323 (Office of the President)	7-31-74
FBYQ	F.B.Y. Haulage Corp., 4500 - 2nd Avenue, Brooklyn, New York 11232 (Office of the President)	9-17-75
FCJI	F.C.J. Trucking Co., Inc., 127 Bedford Avenue, Brooklyn, New York 11211 (Office of the Vice President)	8-27-75
FJBQ	F.J.B. Trucking Corp., 53 Park Place, New York, New York 10007 (Office of the President)	9-10-75
FALK	Falk Transportation Co., Inc., 10 Ewing Avenue, Spring Valley, New York 10977 (Office of the Traffic Manager)	9-3-75

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ALPHA CODE	NAME AND ADDRESS OF SUBSCRIBERS	AGREEMENT EXECUTED
	MOTOR CARRIER SUBSCRIBERS	
FAFF	Falwell Fast Freight, Inc., P. O. Box 937, Lynchburg, Va. 24505 (Office of the Secretary & Treasurer)	5-2-73
FBPE	Farruggio's Bristol & Philadelphia Auto Express, Inc., 1419 Radcliffe St., Bristol, Pa., 19007 (Office of the President)	7-30-73
FPCQ	Fastpac Transportation Co., 3445 Paterson Plank Road, North Bergen, New Jersey 07047 (Office of the President)	8-20-75
FDRQ	Federation Trucking Corporation, 1101 Prospect Ave., Brooklyn, N. Y. 11218 (Office of the President)	8-21-73
	Feibus-Gordon of Charlotte, Inc., North-South Road, Scranton, Pa. 18501 (Office of the Vice President)	8-21-75
	Feibus-Gordon of Scranton, Inc., North-South Road, Scranton, Pa. 18501 (Office of the Vice President)	8-21-75
FELD	Feldman's Express Inc., 25 Proctor Street, Roxbury, Mass. 02119 (Office of the President)	3-18-74
FVRO	Ferrara Bros., 525 W. 24th Street, New York, New York 10011 (Office of the Partner)	9-9-75
FERY	Ferraro, Frank, Trucking Co., Inc., 600 Market Street, Elmwood Park, New Jersey 07407 (Office of the President)	8-15-75
FEUR	Feuer Transportation Inc., Federal & Knowles Streets, Yonkers, New York 10702 (Office of the Vice President - Traffic)	8-26-75
FNCI	Finocchiaro, Inc., 848 S. Swanson Street, Philadelphia, Pa. 19147 (Office of the President)	9-9-75
FJTQ	Fiorillo, Joseph, Trucking Corp., 1081 Ogden Avenue, Bronx, New York 10452 (Office of the Secretary Treasurer)	9-15-75
FIOT	Fiorot Trucking, Inc., West Main Street, Pen Argyl, Pa. 18072 (Office of the Treasurer)	9-22-75
FKTI	Fischkelta Trucking, Inc., P. O. Box 567, Ridgefield, New Jersey 07657 (Office of the President)	8-29-75
FISR	Fisher & Brother, Inc., 201 East 23rd Street, New York, New York 10010 (Office of the Vice President)	4-26-74
	Fleming, J. Clint, Inc., P. O. Box 1002, Danville, Virginia 24541 (Office of the President)	
FRDS	Ford's Express & Transfer Co., Inc., 309 Milburn Avenue, Lyndhurst, New Jersey 07071 (Office of the Secretary)	9-11-75
FHRQ	Fort Haulage & Rental Company, 3211 Georgetown Rd., Box 6336, Baltimore, Md. 21230 (Office of the President)	10-31-73
FOWR	Fowler & Williams, Inc., 1300 Meylert Avenue, Scranton, Penna. 18501 (Office of the Vice President)	5-21-73
FXGN	Fox & Ginn, Inc., 207 Perry Road, Bangor, Maine 04401 (Office of the Vice President)	7-26-73
FRME	Frame's Morrison & Ryan, Inc., 1233 Wright's Lane, West Chester, Pennsylvania 19380 (Office of the Sec. Treas.)	4-2-73
	Frank's Parcel Service, Inc., Foot of Babcock Place, P. O. Box 491 Main Station, Yonkers, N. Y. 10702 (Office of the Vice President)	8-19-74
FRAT	Frank's Trucking Corp., 316 S. 6th Avenue, La Grange, Ill. 60525 (Office of the General Manager)	7-12-73
FRDZ	Fred's Delivery Service, 332 Eastern Parkway, Irvington, N. J. 07111 (Office of the Owner)	8-15-73
FRDM	Freedman Motor Service, Inc., P. O. Box 280, Edison, New Jersey 08817 (Office of the President)	9-5-75
FREA	Freeport Transport, Inc., 1200 Butler Road, Freeport, Pennsylvania 16229 (Office of the Vice President)	7-9-73
FRIG	Frigid Express Inc., 396 Henderson Street, Jersey City, New Jersey 07302 (Office of the President)	10-2-75
FROE	Froehlich Transportation Co., Inc., Federal Road, Danbury, Conn. 06810 (Office of the President)	8-12-75
FRYT	Fry Trucking Company, P. O. Box 4, Millville, West Virginia 25432 (Office of the President)	9-19-73
FULT	Fuller Transportation, Inc., 1200 Shull Street, West Columbia, S. C. 29169 (Office of the President)	6-20-73
	Flynn, P. J., Inc., 1000 Coolidge Street, South Plainfield, New Jersey 07080 (Office of the President)	9-15-75

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ALPHA CODE	NAME AND ADDRESS OF SUBSCRIBERS	AGREEMENT EXECUTED
	MOTOR CARRIER SUBSCRIBERS	
FUNK	Funk's Hauling Service, Inc., 2750 Grant Avenue, Philadelphia, Pa. 19114 (Office of the Secretary)	5-23-73
GBLR	Gabler, H. C., Inc., Box 220, Chambersburg, Pennsylvania 17201, (Office of the Vice President)	6-7-73
GAMA	Gamache Trucking Co., Inc., Box #612, Bates Street, Fall River, Mass. 02722 (Office of the Vice President)	8-18-75
GFAL	Garafalo & Sons, Inc., 142-21st Street, Brooklyn, New York 11232 (Office of the Secretary - Treasurer)	9-8-75
GARE	Gardiner's Express, Moss Mill Road, Hammonton, New Jersey 08037 (Office of the Vice President and Secretary)	5-18-73
GMFB	Garrison Motor Freight, Inc., Garrison Place (Box 969) Harrison, Arkansas 72601 (Office of the President)	4-5-73
GATC	Gateway Transportation Co., Inc., 455 Park Plaza Drive, LaCrosse, Wisconsin 54601 (Office of the Supv. Trailer Interchange)	5-11-73
GTNQ	Gatien Transport Inc., P. O. Box 326, Lacolle, Quebec, Canada (Office of the Secretary - Treasurer)	8-15-75
	George O. Trucking, 597 Degraw Street, Brooklyn, New York 11217 (Office of the President)	8-25-75
GJOQ	Georgiana, Joseph, Trucking Co., 26 Lafayette Avenue, Somerset, New Jersey 08873 (Office of the Owner)	8-20-75
GTPO	Geronimo Transportation Systems, Inc., Bldg. #45 - Bush Terminal, Brooklyn New York 11232 (Office of the Vice President)	8-25-75
GTKO	Gesell Trucking Corp., 167-16 - 147 Avenue, Jamaica, New York 11434 (Office of the President)	9-11-75
GNRQ	Glenery, Inc., 173 Hickory Street, Kearny, New Jersey 07032, (Office of the President)	8-14-75
	Gordon, Samuel & Sons, Inc., 333 Third Street, Chelsea, Mass. 02150 (Office of the President)	2-20-74
GORD	Gordons Transports, Inc., 185 West McLemore Ave., Memphis, Tenn. 38101 (Office of the President)	7-25-73
GJHQ	Great Jones Hauling Corp., 34 East 4th Street, New York, New York 10003 (Office of the Secretary)	8-15-75
GOFQ	Groff, C., Cartage, 3721 President Street, Philadelphia, Penna. 19114 (Office of the President)	2-14-74
GROM	Grondin Transport, Inc., St. Frederic, Beauce, Quebec, Canada (Office of the President)	7-25-73
GSTO	Gross Transportation Corp., 480 Van Brunt Street, Brooklyn, New York 11231 (Office of the President)	9-2-75
HMGQ	H & M General Trucking Corp., 501 New County Road, Secaucus, New Jersey 07094 (Office of the General Manager)	9-17-75
HNSI	Haddad & Sons, Inc., 246 Fifth Avenue, New York, New York 10001 (Office of the Vice President)	8-19-75
HFTQ	Haffner, Frank, Trucking Company, 208 Walnut Street, Lynbrook, New York 11563 (Office of the Owner)	9-4-75
HFMF	Hall's Fast Motor Freight, Inc., 330 Oak Tree Avenue, Plainfield, New Jersey 07080 (Office of the President)	9-16-75
HAML	Hamilton Motor Lines, Inc., 55 Central Drive, Farmingdale, New York 11735 (Office of the President)	4-15-74
HAXP	Harder's Express, Inc., Route 9-H, Claverack, New York 12513 (Office of the President)	7-2-73
PEMV	Haulmark Transfer, Inc., P. O. Box 343, Cockeysville, Maryland 21030 (Office of the President)	1-17-75
HKCT	Hawk of Connecticut, Inc., 137 Harvard Avenue, Stamford, Conn. 06902 (Office of the President)	11-7-73
HEXP	Highway Express Co., 280 Eastern Ave., Chelsea, Mass. 02150 (Office of the Asst. Tfc. Mgr.)	4-11-73
HWFT	Highway Freight, Inc., 147 Corbin Street, Newark, New Jersey 07114 (Office of the President)	6-11-73
HMIE	Hmieleski Trucking Corp., 108 New Era Drive, South Plainfield, N. J. 07080 (Office of the Vice President)	7-18-73

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	MOTOR CARRIER SUBSCRIBERS	
	Holland Manufacturing Company, 15 Main Street, Succasunna, New Jersey 07876 (Office of the Controller)	4-22-74
HMEE	Horn's Motor Express, Inc., 2020 Lincoln Way East, Chambersburg, Pa. 17201 (Office of the Vice President-Traffic)	9-10-73
HOUF	Houff Transfer, Inc., P. O. Box 91, Weyers Cave, Virginia 24486 (Office of the Genral Traffic Manager)	3-25-74
HOXP	Howard's Express, Inc., P. O. Box 72, Geneva, New York 14456 (Office of the Vice President)	4-19-73
HUDB	Hudson Bergen Trucking Co., 200 Central Ave., Teterboro, N. J. 07608 (Office of the Treasurer)	7-30-73
	Hunt, Philip A., Chemical Corp., Roosevelt Blvd., Palisades Park, New Jersey 07650 (Office of the Vice President, Manufacturing)	9-5-75
HEJQ	Hutter, E. J., Trucking Corp., P. O. Box 84, Bound Brook, New Jersey 08805 (Office of the President)	8-25-75
IMLF	IML Freight, Inc., 2175 South 3270 West, Salt Lake City, Utah 84119 (Office of the Executive Vice President - Operations)	6-26-73
ITSQ	Ideal Trucking Service Corporation, 15 Brook Street, Jersey City, N. J. 07302 (Office of the President)	8-14-75
ICXS	Illinois-California Express, Inc., 510 E. 51st Avenue, Denver, Colorado 80216 (Office of the Vice President - Operations)	4-9-73
ICCI	Imperial Cartage Co. Inc., P. O. Box 352, Jersey City, New Jersey 07303 (Office of the Secretary)	9-8-75
INDT	Industrial Trucking Co., Summitt Terminals, Peabody, Massachusetts 01960 (Office of the Owner)	7-1-74
INSL	P. Ingersoll, Inc., 605 N. American, Philadelphia, Penna. 19123 (Office of the Secretary - Treasurer)	5-19-73
INFR	Inland Freightways, Inc., Foot of John Hay Avenue, Kearny, New Jersey 07032 (Office of the Vice President & Secretary Treasurer)	9-15-75
INTE	Interboro Trucking Company, Inc., Jackson Ave., P. O. Box 569, Metuchen, N. J. 08840 (Office of the Vice President)	8-1-73
ICTC	Intercity Transportation Company, 600 Turnpike, South Easton, Mass. 02375 (Office of the President)	6-11-73
	Intermodal Services, Inc., 67 Broad Street, New York, New York 10004 (Office of the President)	
IPTQ	Interport Trucking Corp., 1430 Harrison Avenue, Kearny, New Jersey 07032 (Office of the Manager)	8-12-75
	Iodice, Ralph Transfer, Inc., 762 East 234th Street, Bronx, New York 10466 (Office of the President)	
JDJI	JDJ Expedited Services, Inc., 127 Broad Avenue, Fairview, New Jersey 07022 (Office of the President)	9-18-75
	J & J Metals, Inc., 489-495 Prelinghuysen Avenue, Newark, New Jersey 07114 (Office of the President)	8-14-75
JLPQ	J.L.P. Express Inc., 31 Haller Dr. - P. O. Box 245, Cedar Grove, New Jersey 07009 (Office of the President)	8-16-75
JSTS	J & S Trucking Service Inc., 309 W. Elizabeth Avenue, Linden, New Jersey 07036 (Office of the Secretary - Treasurer)	8-21-75
JTRT	J.T.R. Trucking Co., Inc., 489 Washington Street, New York, New York 10013 (Office of the President)	8-11-75
JCOL	Jack Cole-Dixie Highway Company, 2625 Territorial Road, St. Paul, Minn. 55114 (Office of the Traffic Manager)	7-16-73
JANT	Jan Transport, Inc., E. 132nd St. & St. Anns Ave., Bronx, New York 10454 (Office of the President)	4-25-73
JAYN	Jayne's Motor Freight, Inc., 860 North Avenue, Elizabeth, New Jersey 07201 (Office of the President)	9-10-75
	Jeffco Fibres, Inc., 2 Rhodes Street, Millbury, Mass. 01527 (Office of the Clerk)	7-9-73
	Jersets Leasing Company, 33 Predmore Avenue, Colonia, New Jersey 07067 (Office of the President)	8-25-75
JROQ	Jersey Overnight Express Inc., 16 Eastside Avenue, Edison, New Jersey 08817 (Office of the Vice President)	8-13-75

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	MOTOR CARRIER SUBSCRIBERS	
JMLS	Johnson Motor Lines, Inc., 2426 North Graham Street, Charlotte, North Carolina 28201 (Office of the Exec. Vice President)	4-6-73
JJTI	Johnson, J., Trucking, 30 Oak Street, Bayonne, New Jersey 07002 (Office of the President)	8-11-75
JTWC	D. D. Jones Transfer & Warehouse Co., Inc., 630 - 22nd St., Chesapeake, Virginia 23324 (Office of the Vice President)	5-24-74
JUEQ	Julian's Enterprises, Route 9, South Amboy, New Jersey 08879 (Office of the Owner)	9-17-75
JRIQ	Junior Industries, Inc., 71 Brighton Court, Brooklyn, New York 11235 (Office of the Secretary Treasurer)	9-15-75
KSXQ	K & S Express, 45 Ranick Road, Hauppauge, New York 11787 (Office of the President)	9-11-75
KEHQ	Kelly, Henry, Truck Service, 595 Madison Ave., New York, New York 10022 (Office of the President)	7-3-73
KENT	Kent Freight Lines, Inc., RD 3, Aberdeen, Maryland 21001 (Office of the Secretary)	8-16-73
KRTO	Kerri Trucking, Inc., 162 Closter Dock Road, Closter, New Jersey 07624 (Office of the Vice President)	9-16-75
KVTI	Kirvin Trucking Co., Inc., 95-06 - 157th Avenue, Howard Beach, New York 11414 (Office of the Secretary - Treasurer)	9-5-75
KIXP	Kitchell Express, Inc., 144 Parsippany Rd., Whippany, N. J. 07981 (Office of the President)	5-9-73
KEXS	Kowalsky's Express Service, 2235 West Main Street, Millville, N. J. 08332 (Office of the Vice President - Traffic)	7-26-73
KRAM	Kramer Trucking Co., Inc., 275 Trumbull Street, Elizabeth, New Jersey 07206 (Office of the President)	8-14-75
LVTC	L & V Trucking Co., 210 Route 46, Saddle Brook, New Jersey 07662 (Office of the Secr.- Treas.)	7-27-73
	La Barge Mirrors, Inc., 875 Brooks, Holland, Michigan 49423 (Office of the Vice President)	9-10-73
LHTC	Laurel Hill Trucking Company, 614 New County Road, Secaucus, New Jersey 07094 (Office of the President)	9-3-75
LEIH	Leighton Trans, Inc., 172 Franklin Turnpike, Mahwah, New Jersey 074[illegible] (Office of the President)	8-26-75
LMTI	Lew-Mill Trucking Co., Inc., 121 Hunter Ridge Road No., Massapequa, New York 11758 (Office of the President)	8-8-75
LMES	Liberty-Middletown Express, Inc., 196 Sprague Avenue, Liberty, New York 12754 (Office of the Owner)	6-6-74
LITC	Liberty Trucking Co., 5000 W. 39th Street, Chicago, Illinois 60650 (Office of the Vice President)	10-16-73
LIME	Lime City Trucking Company, Inc., 1455-65 Swan Street, Huntington, Indiana 46750 (Office of the Vice President)	3-28-73
LALQ	Lincoln Automotive Leasing Corp., 1080 Westside Avenue, Jersey City, New Jersey 070306 (Office of the President)	9-17-75
LIMF	Linden Motor Freight Company, Inc., 1300 Lower Road, Linden, New Jersey 07036 (Office of the Assistant Secretary)	9-16-75
LBMF	Lo Biondo Bros. Motor Express, Inc., P. O. Box 160, Bridgeton, New Jersey 08302 (Office of the Traffic Manager)	8-25-75
LOMB	Lombard Bros., Inc., 233 Mill Street, Waterbury, Connecticut 06720 (Office of the V. P. & Dir. of Equipment & Maintenance)	9-23-75
LONG	Long Transportation Co., 3755 Central Ave., Detroit, Mich. 48210 (Office of the Exec. Vice President)	7-3-73
LAYM	Los Angeles Yuma Freight Lines, 800 Pacific Avenue, Yuma, Arizona 85364 (Office of the Manager)	4-9-73
LOZW	Lozowick, Herman, Trucking Co., 1551 Park Avenue South, Linden, New Jersey 07036 (Office of the President)	8-12-75
LURQ	Lurie, C. Trucking Co., Inc., 866 East 29th Street, Brooklyn, New York 11210 (Office of the President)	11-9-73
MNCI	M & C Trucking, 39 East 5th Street, Deer Park, New York 11729 (Office of the President)	9-5-75

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	MOTOR CARRIER SUBSCRIBERS	
MBAQ	M.B.A. Packing & Trucking Co. Inc., 112 8th Street, Brooklyn, New York 11215 (Office of the President)	8-15-75
MCLO	MCT Leasing Company, 608 Villa Avenue, Staten Island, New York 10302 (Office of the Owner)	9-25-75
	M. Trucking Service, Inc., 82 Walker Street, New York, New York 10013 (Office of the President)	9-19-75
MMTR	M & M Transportation Company, 186 Alewife Brook Parkway, Cambridge, Mass. 02138 (Office of the Vice President - Marketing & Traffic)	9-24-75
MTAR	Main Trucking & Rigging Co., Inc., P. O. Box 236-Wallace St., Elmwood Park, N. J. 07407 (Office of the Dispatcher)	6-21-73
MBTL	Maislin Transport Limited, 7401 Newman Blvd., LaSalle, Quebec, Canada (Office of the Vice President Operations)	5-25-73
MAIS	Maislin Transport of Delaware, Inc., 7401 Newman Blvd., LaSalle, Quebec H8N 1X4 (Office of the V.P. - Operations)	9-25-74
MAJV	Major Van Lines, Inc., 60 Jacobus Avenue, So. Kearny, New Jersey 07032 (Office of the Vice President)	9-3-75
MLBA	Malba Trucking Inc., 9-10 38th Avenue, Long Island, New York 11101 (Office of the President)	8-13-75
MKTI	Mangam-Kester Transfer Corp., 270 Van Brunt Street, Brooklyn, New York 11231 (Office of the President)	8-15-75
MJPQ	Manley, John, Produce Delivery Corp., 1350 Lafayette Avenue, Bronx, New York 10474 (Office of the President)	9-17-75
MKCQ	Mark Carriers Co. Inc., 1185 Grand Street, Brooklyn, New York 11211 (Office of the Import Manager)	9-5-75
MKYQ	Markay Trucking Co., Inc., 123 Christie Street, Newark, New Jersey 07105 (Office of the President)	8-13-75
MDTC	The Maryland Transportation Co., 1111 Frankfurst Ave., Baltimore, Md. 21225 (Office of the General Manager)	7-16-73
MEXQ	Massis Express Co., Inc., Bldg. #3 - Navy Yard, Brooklyn, New York 11205 (Office of the President & Secretary)	8-18-75
MLBQ	Maul Bros. Inc., 111 S. 15th St., Millville, New Jersey 08332 (Office of the Traffic Supervisor)	8-15-73
MAUM	Maumee Express, 43 County Road, Secaucus, New Jersey 07094 (Office of the Owner)	9-23-75
MCBQ	McCaffrey Bros., Inc., 9 Vestry Street, New York, New York 10013 (Office of the President)	8-1-73
MDPI	McCarthy, David P., Inc., 650 East 12th Street, New York, New York 10009 (Office of the President)	8-19-75
MCGV	McGovern, G. T., Trucking Co., Inc., 1000 Dean Street, Brooklyn, N. Y. 11238 (Office of the Treasurer)	6-25-73
MECA	Mecca & Son Trucking Corp., 25 Fairmount Avenue, Jersey City, New Jersey 07304 (Office of the President)	9-4-75
MMFA	Mercer Motor Freight, Inc., 411 No. Clinton Ave., Trenton, N. J. 08638 (Office of the President)	7-9-73
MXPP	Metro Export Packers, Inc., 46-50 Lispenard Street, New York, New York 10013 (Office of the President)	5-24-73
MTXS	Metro Express, Inc., 1020 Christiana Avenue, Wilmington, Del. 19801 (Office of the President)	7-23-73
MPTQ	Metropolitan Truck Transportation, Inc., 115 Jacobus Avenue, Kearny, New Jersey 07032 (Office of the President)	8-27-75
MTRK	Metropolitan Trucking, Inc., 2424 - 95th Street, North Bergen, New Jersey 07047 (Office of the Comptroller)	8-20-75
MLSM	Milestone Hauling Contractors, 4233 Leiper Street, Philadelphia, Pa. 19124 (Office of the Owner)	8-15-75
MLLI	Miller, Charles, Trucking Corp., 31-18 Starr Avenue, Long Island City, N. Y. 11101 (Office of the Vice President)	8-15-75
MMTI	Miller, Max, Trucking Co. Inc., 22-14 - 37th Avenue, Long Island City, New York 11101 (Office of the Secretary)	8-12-75
MSKI	Mirsky Trucking Corp., 90 W. Broadway, New York, New York 10007 (Office of the President)	8-19-75

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	MOTOR CARRIER SUBSCRIBERS	
MONA	Monahan Transportation Co., Inc., 99 Colorado Ave., Warwick, R. I. 02888 (Office of the President)	8-7-73
MBCI	Monmouth Beach Cold Storage Co., Inc., 11 Riverdale Avenue, Monmouth Beach, New Jersey 07750 (Office of the Secretary)	9-12-75
MTPQ	Monmouth Transport Corp., P. O. Box 73, Rumson, New Jersey 07760 (Office of the President)	5-23-73
MOKG	Moore, K. G., Inc., 16 Progress Ave., P. O. Box #385, Nashua, N. H. 03060 (Office of the President)	7-10-73
MRSY	Morrissey, B. G., Inc., 6236 Oakley Street, Philadelphia, Pa. 19111 (Office of the Vice President)	4-1-74
MSTI	Mosaic Trucking Company, 900 U. S. #1, Avenel, New Jersey 07001 (Office of the President)	9-16-75
MOSK	Moskowitz Motor Transportation, Inc., Drawer 427, Jewett City, Conn. 06351 (Office of the President)	8-21-75
	Motorcar Parts, Inc., 2790 Saw Mill Run Blvd., Pittsburgh, Pennsylvania 15227 (Office of the Secretary-Treasurer)	11-26-73
MCGQ	Motor Cargo, 185 So. Redwood Rd., North Salt Lake City, Utah 84054 (Office of the Director of Operations)	4-5-73
MFXP	Motor Freight Express, P. O. Box 1029, York, Penna. 17405 (Office of the President)	4-9-73
MYST	Mystic Express Co., Inc., 30 Lowell Junction Rd., Andover, Mass. 01810 (Office of the President)	7-31-73
	N.C.S.I., 616 Ingram Avenue, Staten Island, New York 10314 (Office of the President)	9-8-75
NTKQ	Nabel Trucking Co., 534 - 3rd Avenue, Brooklyn, New York 11215 (Office of the President)	8-20-75
	National Casein of New Jersey, Broad Street, Riverton, New Jersey 08077 (Office of the Vice President)	2-15-73
NPKE	National Packers Express, Inc., P. O. Box 162, North Bergen, New Jersey 07047 (Office of the President)	4-2-74
NAVA	Navajo Freight Lines, Inc., 1205 S. Platte River Drive, Denver, Colorado 80223 (Office of the V.P.-Line Haul Operations)	11-6-73
NELY	Neely, Ross, Express, Inc., 1500 2nd Street, West, Birmingham, Alabama 35214 (Office of the Vice President - Traffic)	4-10-73
NEHL	Nehls, R. L., Transfer, Inc., 315 Barrington Avenue, Dundee, Illinois 60118 (Office of the Secretary)	4-12-73
NEPT	Neptune World Wide Moving, Inc., 55 Weyman Avenue, New Rochelle, New York 10805 (Office of the Vice President)	6-4-73
NEST	Nestor Bros., Inc., 612 Vestal Parkway W., Vestal, New York 13850 (Office of the President)	2-14-74
NEUF	Neufeld, Jess R., Inc., 46 Laight Street, New York, New York 10013 (Office of the President)	9-18-75
NEAF	Newberg Auto Freight, Inc., 408 West First Street, Newberg, Oregon 97132 (Office of the President)	3-29-73
NEMF	New England Motor Freight, Inc., 454 Main Avenue, Wallington, New Jersey 07057 (Office of the General Manager)	9-16-75
NJAQ	New Jersey American Warehouse Corp., 15 Linden Avenue, Jersey City, New Jersey 07305 (Office of the President)	9-10-75
NPME	New Penn Motor Express, Inc., 625 So. 5th Avenue, Lebanon, Pa. 17042 (Office of the Vice President - Operations)	9-2-75
	New Point Scrap - Aaron Battery Corp., 551 New Point Road, Elizabeth, New Jersey 07206 (Office of the Bookkeeper)	8-13-75
NYMH	New York Mid Hudson Transportation Corp., 160 Jony Drive, Carlstadt, New Jersey 07072 (Office of the Operations Manager)	9-16-75
NYNT	New York - New Jersey Transportation, Inc., Box 1002 - Brookdale Station, Bloomfield, New Jersey 07003 (Office of the President)	9-9-75
NOED	Noeding, Charles, Trucking Co., Inc., 16 Central Avenue, Tenafly, New Jersey 07670 (Office of the Exec. Vice President)	4-2-73
NOER	Noerr Motor Freight, Inc., 205 Washington Avenue, Lewistown, Penna. 17044 (Office of the President)	4-9-73

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ALPHA CODE	NAME AND ADDRESS OF SUBSCRIBERS	AGREEMENT EXECUTED
	MOTOR CARRIER SUBSCRIBERS	
NCTF	Normand's City Truck Freightways, Inc., 35 Southwest Cutoff, Worcester, Mass. 01604 (Office of the President Treasurer)	7-13-73
NOPT	North Penn Transfer, Inc., P. O. Box 230, Lansdale, Pennsylvania 19446 (Office of the President)	8-20-75
NYLT	Nylantic Freight Lines, Inc., P. O. Box C, Scarsdale, New York 10583 (Office of the President)	3-20-74
OKMS	O. K. Motor Service, Inc., 3400 S. Pulaski, Chicago, Illinois 60647 (Office of the Vice President)	3-30-73
ONCM	O.N.C. Freight Systems, 2800 West Bayshore Road, Palo Alto, Calif. 94303 (Office of the V. P. - Adm.)	4-9-73
ODEE	O'Donnell's Express, 5 Davis, Presque Isle, Maine 04769 (Office of the Dir. of Operations)	4-3-73
OATE	Oates Bros., Inc., 253-261 Howe Avenue, Shelton, Connecticut 06484 (Office of the President)	8-18-75
ODAQ	One (1) A Trucking Company, 88 Sheridan Street, Irvington, New Jersey 07111 (Office of the President)	5-1-74
ONFR	Oneida Motor Freight, Inc., 3 Commercial Avenue, Carlstadt, New Jersey 07072 (Office of the General Traffic Manager)	9-2-75
OOST	Oostdyk, Engle, Inc., 465 Boulevard, Elmwood Park, New Jersey 07407, (Office of the Traffic Manager)	8-18-75
OBII	Original Beer Importing & Distributing Co., Inc., 21-55 - 51st Avenue, Long Island City, New York 11101 (Office of the Import Traffic Manager)	9-8-75
OVEA	Overland Western International, Inc., 2828 Howard Street, Detroit, Mich. 48216 (Office of the V.P. Sales & Tfc.)	4-23-73
OVRE	Overland Western Limited, P. O. Box 460, Woodstock, Ontario, Canada (Office of the V. P. Sales & Traffic)	4-23-73
OVNT	Overnite Transportation Company, P.O. Box 1216, 1100 Commerce Road, Richmond, Virginia 23209 (Office of Inteeline Traffic)	3-29-73
OWEI	Owens Truckmen, Inc., 185 Concord St., Brooklyn, New York 11201 (Office of the President)	8-12-75
PQSQ	P. Q. S. Trucking Co., Inc., 19 - 23 5th Street, Brooklyn, New York 11231 (Office of the President)	4-24-74
PNTK	P & N Trucking Co., Inc., 4010 Dell Avenue, North Bergen, New Jersey 07047 (Office of the President)	8-12-75
PMTC	Pacific Motor Trucking Co., #9 Main St., San Francisco, California 94105 (Office of the President)	4-19-73
PACE	Pacelli Bros. Trans., Inc., 119 Trowel Street, Bridgeport, Connecticut 06607 (Office of the Vice President - Secretary)	8-12-75
PRTI	Par Transportation, Inc., Bldg. #131 - Marsh Street, Port Newark, New Jersey 07114 (Office of the President)	9-5-75
PRKM	Park Motor Carrier Inc., 232 Dey Street, Jersey City, New Jersey 07306 (Office of the Vice President)	9-19-75
PARA	Paramount Express of Paterson, Inc., 1 Swinburn St., Paterson, New Jersey 07503 (Office of the Vice President - Secretary)	9-9-75
PLTI	Parness, Leonard, Trucking Corp., 800 Magnolia Avenue, Elizabeth, New Jersey 07201 (Office of the President)	8-27-75
PASS	Passaic Terminal Trans. Co., Inc., 800 Bloomfield Avenue, Clifton, N.J. (Office of the Traffic Manager)	8-15-75
PTGI	Pat-Gar Freight Lines, Inc., 57 Hathaway Street, Wallington, New Jersey 07057 (Office of the President)	8-29-75
PULT	Paul's Trucking Corporation, 301 Blair Road, Woodbridge, New Jersey 07095 (Office of the Vice President)	11-16-73
PEAK	Peak Transfer Co., Inc., 57 Hathaway Street, Wallington, New Jersey 07057 (Office of the President)	8-29-75
PEOP	Peoples Express Company, 497 Raymond Blvd., Newark, New Jersey 07105 (Office of the Secretary - Treasurer)	2-25-74
PEPT	Pep Trucking Co., Inc., 386 Henderson Street, Jersey City, New Jersey 07302 (Office of the Vice President)	8-15-75
PTKS	Petel Trucking Service, Inc., 42 Laight St., New York, New York 10013 (Office of the President)	7-3-73

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	MOTOR CARRIER SUBSCRIBERS	
PNTR	Pinter Bros., Inc., Carll's Path & Lake Ave., Deer Park, N. Y. 11729 (Office of the Secretary)	7-20-73
	Plainridge Inc., 62-47 - 60th Street, Ridgewood, New York 11227 (Office of the Vice President)	8-29-75
POHL	Pohlman Express, Inc., 37 Thomas Street, Paterson, New Jersey 07503 (Office of the President)	9-2-75
	Port Clyde Packing Co. Inc., 81 North Broadway, Hicksville, New York 11802 (Office of the President)	8-12-75
PJTP	Port Jersey Transportation, Foot of E. 45th St., Bayonne, N. J. 07002 (Office of the Vice President)	7-2-73
PNYI	Port of New York Express Co., Inc., 145 Morgan Street, Jersey City, New Jersey 07302 (Office of the President)	9-4-75
PTTI	Port Terminal Transportation Inc., Mohawk & Tyler Streets, Port Newark, New Jersey 07102 (Office of the Operations Manager)	9-2-75
	Prescott Trucking Corp., 218 Oak Street, Elizabeth, New Jersey 07201 (Office of the President)	8-12-75
PRES	Preston Trucking Company, Inc., 151 Easton Blvd., Preston, Maryland 21655 (Office of the Vice President - Traffic)	5-14-73
PTSC	Putnam Transfer & Storage Company, 1502 Woodlawn Avenue, Zanesville, Ohio 43701 (Office of the President)	4-7-73
QUTL	Quinn, T. E., Truck Lines Limited, P. O. Box 401, Niagara Falls, Ontario, Canada (Office of the Interline Department)	8-1-73
RCML	R-C Motor Lines, Inc., 1450 Wabash Avenue, Terre Haute, Indiana 47808 (Office of the Exec. Vice President)	4-11-73
REXZ	REA Express, Inc., 219 East 42nd Street, New York, New York 10017 (Office of the Sr. V. P. - Operations)	4-10-73
RAEO	Raemin Trucking Co., 1120 Close Avenue, Bronx, New York 10472 (Office of the President)	8-15-75
RAIQ	Raiders Express, Inc., 6 Senate Place, Jersey City, New Jersey 07306 (Office of the President)	9-15-75
	Rainforth & Kelly, Inc., 515 West 23rd Street, New York, New York 10011 (Office of the President)	8-15-75
	Raleigh Shipping Corp., 650 West 30th Street, New York, New York 10001 (Office of the President)	8-20-75
REBO	R E Bros. Trucking Co., 238 Van Brunt Street, Brooklyn, New York 11231 (Office of the Partner)	9-10-75
RAFL	Red Arrow Freight Lines, Inc., 3901 Seguin Road, San Antonio, Texas 78297 (Office of the President)	4-5-73
REMF	Red Ball Motor Freight, Inc., 3177 Irving Blvd., Dallas, Texas 75247 (Office of the Vice President - Sales & Traffic)	9-12-73
RIXI	Regional Import & Export Trucking Co., Inc. 115 Paterson Avenue, Hoboken, New Jersey 07030 (Office of the Vice President)	8-14-75
RESH	Reisch Trucking & Transportation Co., Inc., 819 Union Avenue, Pennsauken, New Jersey 08110 (Office of the Vice President)	8-25-75
RVNQ	Reliable Van & Storage Co., 550 Division Street, Elizabeth, New Jersey 07201 (Office of the Director of Operations)	8-19-75
RCOT	Rico Transportation Co. Inc., 131 Hillside Avenue, South River, N. J. 08882 (Office of the Vice President)	8-21-75
RICC	Ricciardi, James, & Sons, Inc., 203 Fillmore Street, Staten Island, New York 10301 (Office of the Secretary - Treasurer)	8-26-75
RXCO	Richmond Express Company, 2581 Richmond Terrace, Staten Island, New York 10303 (Office of the President)	9-18-75
RGMW	Rio Grande Motor Way, Inc., 1400 West 52nd Avenue, Denver, Colorado 80221 (Office of the V. P. - Marketing)	4-2-73
RITE	Riteway Express, Inc., 285 Old Hook Road, Westwood, New Jersey 07675 (Office of the Assistant to the President)	9-17-75
RIVQ	River Transfer Corp., 23 Renwick, New York, New York 10013 (Office of the President)	6-29-73
RDCO	Roads, C., Corp., 350 Route 440, Jersey City, New Jersey 07305 (Office of the President)	8-26-75

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	MOTOR CARRIER SUBSCRIBERS	
ROMT	Robbins Motor Transportation, Inc., Industrial Hwy. & Saville Ave., Eddystone, Pa. 19013 (Office of the Vice President)	7-24-73
ROMA	Romano Bros. Trucking Inc., 46-24 - 28th Street, Long Island City, New York 11101 (Office of the President)	8-28-75
	Royal, H. M., Incorporated (Ro-Bo-To, Inc.), 689-691 Pennington Ave., Trenton, New Jersey 08601 (Office of the Traffic Manager)	8-15-75
	Royal Motor Haulage, Inc., 50 Laight Street, New York, New York 10013 (Office of the President)	9-25-75
RUHL	Ruhl Transportation Co., Inc., Salem Shoppine Center - Box #34, Salem, New Jersey 08079 (Office of the Secretary - Treasurer)	9-10-75
RUJQ	Rujac Trucking Corp., 30 Hartz Way, Secaucus, New Jersey 07094 (Office of the Secretary Treasurer)	8-12-75
RUPP	Rupp-Southern Tier Freight Lines, Inc., Route 211, P. O. Box 489, Middletown, New York 10940 (Office of the Traffic Manager)	5-14-73
	Rushton Industrial Construction, Brower Rd. & Andrews Dr., West Paterson, New Jersey 07424 (Office of the Exec. Vice President & Secretary)	9-8-75
RUST	Russell Transfer, Inc., 444 Glenmore Drive, Salem, Virginia, 24153 (Office of the V.P. Traffic & Commerce)	4-5-73
RUTC	Russell Truck Company, 3421 South Malt Avenue, Los Angeles, California 90040 (Office of the Secretary)	5-19-75
RUTG	Rutgers Express Inc., 189 Townsend Street, New Brunswick, New Jersey 08901 (Office of the President)	9-10-75
SNJQ	S & J Trucking Co., Inc., Bldg. 77 Brooklyn Navy Yard, Brooklyn, New York 11205 (Office of the Vice President)	8-12-75
SFWY	Safeway Trucking Corporation, 2210 McLester Street, Elizabeth, New Jersey 07201 (Office of the Vice President & Secretary)	8-15-75
SLSN	Sal Son Trucking Co., Inc., 248 South Street, New York, New York 10002 (Office of the President)	9-17-75
SANB	Sanborn's Motor Express, Inc., 550 Forest Avenue, Portland, Maine 04101 (Office of the Gen. Traffic Manager)	4-10-73
SAND	Sandhaus, Harold M., 1295 West 71st Terrace, Kansas City, Missouri 64114 (Office of the Owner)	3-30-73
SFTT	The Santa Fe Trail Transportation Company, 433 E. Waterman, Wichita, Kansas 67202 (Office of the General Manager)	4-11-73
SCHR	Scherr Motor Freight, Inc., 2619 W. Susquehanna Ave., Philadelphia, Pa. 19121 (Office of the President)	8-16-73
	Schroth, Emil, A., Inc., Yellowbrook Road & Copper Avenue, Howell Township, New Jersey 07727 (Office of the Assistant Secretary)	9-22-75
SZTQ	Schwartz Trucking Co., 344 West Broadway, New York, New York 10013 (Office of the Owner)	8-18-75
	Scott, Jordan Trucking Corp., 878 Park Lane, North Woodmere, New York 11581 (Office of the Secretary)	9-25-75
SJTQ	Sea Jet Trucking Corp., 4201 First Ave., Brooklyn, New York 11232 (Office of the Vice President)	8-24-75
SLTI	Seal Trucking Ltd., 254-262 Jefferson Street, Newark, New Jersey 07105 (Office of the President)	9-4-75
SEAQ	Seaport Trucking Co, Inc., P. O. Box 37, Jersey City, New Jersey 07306 (Office of the President)	9-5-75
	Sealand Abbey Packing Corp., 101-123 53rd St., Brooklyn, New York 11232 (Office of the President)	8-13-75
STPO	Sea Transfer Corp., 1241 Viele Avenue, Bronx, New York 10474 (Office of the President)	9-9-75
SEWA	Seaway Motor Express, Inc., 6412 Coffeen St., Watertown, N.Y. 13601 (Office of the Secretary-Treasurer)	3-29-73
SEIG	Seigle's Express, Inc., 81 Porete Avenue, No. Arlington, New Jersey 07032 (Office of the President)	9-4-75
SJSQ	Sepenuk, J., & Sons, Inc., 21 Hyatt Avenue, Newark, New Jersey 07105 (Office of the Secretary)	8-14-75
SMFC	Serv All Motor Freight, Inc., 53 Liberty Street, Passaic, New Jersey 07055 (Office of the President)	9-17-75

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	MOTOR CARRIER SUBSCRIBERS	
	Shalmer Trucking Corp., 85 Kent Avenue, Brooklyn, New York 11211 (Office of the President)	9-18-75
SHAN	Shanahan Motor Lines, Inc., 1600 South Delaware Ave., Philadelphia, Pa. 19148 (Office of the V. P. - Sales & Traffic)	6-4-73
SHAY	Shay's Service, Inc., North Main St., Dansville, New York 14437 (Office of the Secretary)	3-29-73
SCIS	Sheehan Carriers, Inc., 62 Lime Kiln Road, Suffern, New York 10901 (Office of the President)	9-3-75
SHTO	Shell Transportation Corp., 899 Meeker Avenue, Brooklyn, New York 11222 (Office of the Vice President)	9-16-75
SHID	Shippers Dispatch, Inc., 1216 West Sample Street, South Bend, Indiana 46624 (Office of the Vice President - Traffic)	4-2-73
STLI	Shippers Terminal Co., Inc., 201 - 11th Avenue, New York, New York 10001 (Office of the Controller)	9-4-75
SIEB	Siebert Trucking Co., Inc., 416 45th Street, Union City, New Jersey 07087 (Office of the President)	9-18-75
SBOQ	Siegel Bros. Trucking & Whse. Inc., 201 Dikeman Street, New York, New York 11231 (Office of the President)	8-12-75
SECG	Silver Eagle Company, 2532 S. E. Hawthorne Street, Portland, Oregon 97014 (Office of the President)	5-7-74
SUTR	Sioux Transportation Company, Inc., 1230 Steuben Street, (Box 3088) Sioux City, Iowa 51102 (Office of the Chairman of the Board - Vice President)	4-10-73
SKYW	Skyway, Inc., 75 Third Avenue, Kearny, New Jersey 07032 (Office of the President)	9-9-75
SLTQ	Slatkin Trucking Co., Inc., 29 Division St., Jersey City, N. J. 07302 (Office of the President)	7-11-73
SLME	Slutsky's Motor Express, Inc., 137 Second Street, Perth Amboy, New Jersey 08861 (Office of the President)	8-13-75
SMEC	Smith, Earl C., Inc., 1720 Dove Street, Port Huron, Michigan 48060 (Office of the Vice President)	4-9-73
STCS	Smith's Transfer Corporation, P. O. Box 1000, Staunton, Virginia 24401 (Office of Operations Department)	3-30-73
SMTP	Smith Transport (International) Limited, 1470 Don Mills Rd., Don Mills, Ontario, Canada (Office of the Director of Traffic)	8-2-73
SANS	Smith & Solomon Trucking Co., How Lane, New Brunswick, N. J. 08903 (Office of the Vice President - Traffic)	7-27-73
SBXI	Snow Ball Express, Inc., 192 Bridgetown Street, Staten Island, New York 10314 (Office of the President)	9-10-75
SNYR	Snyder, H. G., Trucking Inc., 1111 Pitfield Blvd., St. Laurent, Quebec Canada H4S 1G3 (Office of the President)	8-28-75
SEFL	Southeastern Freight Lines, P. O. Box 5887, Columbia, S. C. 29250 (Office of the Operations Manager)	5-4-73
SOOR	South Orange Express Inc., 280 Colfax Avenue, Clifton, New Jersey 07013 (Office of the President)	9-5-75
SPTC	Southern Pacific Transport Co. of Texas & Louisiana, P. O. Box 6187, Dallas, Texas 75222 (Office of the V. P.)	4-29-73
STHT	Southgate Trucking Co., 315 Dunmore Street, Norfolk, Virginia 23510 (Office of the Executive Vice President)	7-23-74
SWTC	Southwestern Transportation Co., P. O. Box 6187, Dallas, Texas 75222 (Office of the Vice President)	4-27-73
SPAR	Spartan Express, Inc., P. O. Box 529, Hwy. I-85, Greer, S. C. 29651 (Office of the President)	6-6-73
SPEC	Spector Freight System, Inc., 210 Twinsbury, Rd., Northfield, Ohio 44067 (Office of the Vice President)	4-23-73
SWSO	Spencer, Wm., & Son Corp., 15 Linden Avenue East, Jersey City, New Jersey 07305 (Office of the Assistant to the President)	9-16-75
SPGL	Spiegel Trucking Inc., 504 Essex Street, Harrison, New Jersey 07029 (Office of the President)	5-11-73
SFSI	Stanch Freight Service Inc., 52 Ninth Street, Brooklyn, New York 11215 (Office of the President)	9-8-75

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SHCI	Standard Hauling Co. Inc., 541 W. 29th Street, New York, New York 10001 (Office of the President)	9-15-75
STPL	Staple Trucking Service, 445 Winding Road, Old Bethpage, New York 11804 (Office of the Vice President)	9-2-75
STEY	Steinway Trucking, Inc., 41-06 19th Ave., Astoria, New York 11105 (Office of the President)	7-5-73
STCI	Streichler Trucking Co., Inc., 545 West 22nd Street, New York, New York 10011 (Office of the President)	8-13-75
STCE	Strickland Transportation Co., Inc., P. O. Box 5689, Dallas, Texas 75222 (Office of the V. P. - Transportation)	4-16-73
SUPC	Suf-City Trucking Inc., 535 Broadhollow Road, Melville, New York 11746 (Office of the President)	8-29-75
SPNS	Supor, J., Trucking and Rigging Co., Inc., 2 Bergen Street, Harrison, N. J. 07029 Office of the Manager)	6-5-74
SRTI	Surface Transportation Co., Inc., 125 So. Van Brunt St., Englewood, New Jersey 07631 (Office of the President)	6-18-75
STGO	Surtag Corp., 518 West 37th Street, New York, New York 10018 (Office of the President)	9-15-75
SUWK	Suwak Trucking Company, 1105 Fayette Street, Washington, Penna. 15301 (Office of the Vice President - Operations)	5-21-73
SVFL	Svensson Freight Lines, Inc., 800 Pacific Avenue, Yuma, Arizona 85364 (Office of the President)	4-9-73
SWFQ	Swift Line Transfer Co., Inc. and/or Marathon Frt. Lines, Inc., 2400-83rd St., North Bergen, New Jersey 07047 (Office of the Controller)	5-23-73
	System Express, Inc., 238 Frelinghuysen Avenue, Newark, New Jersey 07114 (Office of the Secretary - Treasurer)	9-17-75
	System Freight, Inc., 238 Frelinghuysen Avenue, Newark, New Jersey 07114 (Office of the President)	9-17-75
TTRD	"T" Transportation, Inc., 207 "P" Street, Boston, Mass. 02127 (Office of the Vice President)	8-1-73
TIME	T.I.M.E.-DC, Inc., P. O. Box 2550-2598 74th St., Lubbock, Texas 79408 (Office of the Director of Transportation)	7-26-73
TNJQ	T & J Trucking Co., 74 Carlton Avenue, East Rutherford, New Jersey 07073 (Office of the Owner)	9-8-75
	T.L.R. Express Company, 3 Long Meadow Drive, Monsey, New York 10952 (Office of the President)	9-23-75
TTTT	T&T Trucking & Transportation Co., Inc.; (J&M Leasing Corp.); (J&M Carriers Corp.), 43-06 54th Rd., Maspeth, N. Y. 11378 (Office of the President)	9-17-75
TTKI	Taurus Truck Lines, Inc., P. O. Box 169, Pine Brook, New Jersey 07058 (Office of the Secretary Treasurer)	9-2-75
TAYN	Taynton, H. W., Company, Inc., 40 Main Street, Wellsboro, Pa. 16901 (Office of the Vice President - Sales & Traffic)	9-15-75
TTRI	Teleg Transportation Inc., 624 Mercer Street, Hightstown, New Jersey 08520 (Office of the President)	9-4-75
TTCI	Teller Trucking Company, Inc., P. O. Box 129, Brooklyn, New York 11206 (Office of the President)	9-3-75
TTLS	Terminal Transport Company, Inc., 248 Chester Avenue, S. E., Atlanta, Georgia 30316 (Office of the V.P. - Operations)	4-10-73
THEQ	Therry, Stephen Trucking, 108 Allan Avenue, Massapequa Park, New York 11762 (Office of the President)	12-18-73
TWST	Thomas, W. S., Transfer, Inc., 1854 Morgantown Avenue, Fairmont, West Virginia 26554 (Office of the Secretary & Treasurer)	8-22-75
THWI	Thompson, H. W., Inc., 181 Pacific Avenue, Jersey City, New Jersey 07304 (Office of the President)	8-12-75
THUR	Thurston Motor Lines, Inc., P. O. Box 10638, 600 Johnston Rd., Charlotte, N. C. 28201 (Office of the Director of Traffic)	6-14-74
TAEI	Tickle, Arthur, Engineering Works, Inc., 26 Delevan Street, Brooklyn, New York 11231 (Office of the President)	9-11-75
TDWD	Tidewater Distribution Services, Inc., 47 - 6th Street, East Brunswick, N. J. 08816 (Office of the Traffic Manager)	9-3-75

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TIEP	Tidewater Inland Express, Inc., Rehoboth Blvd., Milford, Delaware 19963 (Office of the Vice President - Traffic)	6-22-73
TRDC	Tirod Corporation, 550 Duncan Avenue, Jersey City, New Jersey 07306 (Office of the Vice President)	9-15-75
TODM	Todd Transport Company, Inc., P. O. Box 158, Secretary, Maryland 21664 (Office of the Vice President)	8-18-75
	Tomar Trucking Corp., 275 Johnston Avenue, Jersey City, New Jersey 07302 (Office of the Vice President)	9-22-75
TMSL	Tomaselli Bros., Inc., 60 Thompson Street, New York, New York 10012 (Office of the President)	8-15-75
TOPH	Top Hat Trucking Inc., 2 Kenny Place, Saddle Brook, New Jersey 07662 (Office of the President)	9-5-75
TORO	Toro Transport Inc., 810 Raymond Blvd., Newark, New Jersey 07105 (Office of the President)	8-29-75
TOWR	Tower Lines, Inc., P.O. Box 6010, 3rd & Warwood Avenue, Wheeling, W.Va. 26003 (Office of the President)	3-30-73
TOWN	Towne, Charles C., & Sons, Inc., 25 Hampshire Rd., Methuen, Mass. 01844 (Office of the President)	11-1-73
TOTC	Townsend Trucking Co., Inc., 300 Milik Street, Carteret, New Jersey 07008 (Office of the President)	8-25-75
TSXI	Trans-Ship Express, Inc., 11 Mercer Street, Metuchen, New Jersey 08840 (Office of the President)	9-15-75
TNGN	Triangle Trucking Inc., 268 Wabash Avenue, Paterson, New Jersey 07509 (Office of the President)	9-11-75
TRIS	Tri State Carrier, Inc., 212 Washington Avenue, Carlstadt, New Jersey 07072 (Office of the Manager)	9-17-75
TCFL	Twin City Freight, Inc., 2550 Long Lake Rd., Roseville, Minn. 55113 (Office of the Sec. Treas.)	4-6-73
	United Ceramic Tile Corp., 923 Motor Parkway, Hauppauge, New York 11781 (Office of the President)	8-14-75
UVLN	United Van Lines, Inc., #1 United Drive, Fenton, Missouri 63026 (Office of the Vice President & General Manager)	4-26-74
VCTS	V. C. Trucking Service, Inc., 67 Irving Street, Brooklyn, New York 11231 (Office of the President)	9-3-75
VNPI	V. & P. Carriers, Inc., 665 Berriman Street, Brooklyn, New York 11208 (Office of the President)	9-4-75
CHUL	Veeco-Crest Services, Inc., 90 Enterprise Avenue South, Secaucus, New Jersey 07094 (Office of the President)	6-1-73
VLTI	Vel Trucking, 433 Murray Hill Parkway, East Rutherford, New Jersey 07073 (Office of the President)	8-15-75
VTCO	Ventry Transportation Corp., 219 9th Street, New York, New York 11215 (Office of the President)	9-15-75
VTRI	Vetri Trucking Company, Inc., 219-41st Street, Brooklyn, New York 11232 (Office of the President)	8-15-75
VMTQ	Vulcano & Montgomery Trucking, 135 43rd Street, Brooklyn, New York (Office of the Vice President)	9-2-75
WALS	Walsh Bros. Inc., 33 Brill Street, Newark, New Jersey 07105 (Office of the President)	8-15-75
WARD	Ward Trucking Corp., 2nd Avenue and 7th Street, Greenwood, Altoona, Penna. 16603 (Office of the President)	4-5-73
	Weaver, Victor F., Inc., 403 South Custer, New Holland, Pa. 17557 (Office of the Secretary)	7-17-75
TWNH	Con. Weimar Corp. (Twin City Haulage Co.) 401 Commerce Rd., Linden, N. J. 07036 (Office of the President)	11-2-73
WTCR	Westchester Motor Lines, Inc., 35 Edgemere Road, New Haven, Conn. 06504 (Office of the President)	8-11-75
WCWC	West Coast Warehouse Corporation, P. O. Box 258, Long Beach, California 90801 (Office of the President)	5-12-75
WGWG	Western Gillette, Inc., 2550 East 28th Street, Los Angeles, California 90058 (Office of the Vice President - Traffic)	9-12-74

LIST OF SUBSCRIBERS

The carriers named below have subscribed to, and their interchange relationships are to be governed by, the terms and conditions of the Uniform Intermodal Interchange Agreement, a copy of which has been provided to each subscribing carrier.

Copies of Agreements signed by motor carrier subscribers are on file at the office of the Equipment Interchange Association, 1616 "P" Street, N. W., Washington, D. C. 20036. Agreements signed by water carrier subscribers are on file at the office of the Steamship Operators Intermodal Committee, 67 Broad Street, Room 2400, New York, New York 10004. Agreements signed by railroad carrier subscribers are on file at the office of the Association of American Railroads, 1920 "L" Street, N. W., Washington, D. C. 20036.

ALPHA CODE	NAME AND ADDRESS OF SUBSCRIBERS	AGREEMENT EXECUTED
	MOTOR CARRIER SUBSCRIBERS	
WMDT	Western Maryland Transfer, Inc., 3225 Tate Street, Baltimore, Md. 21226 (Office of the President)	7-12-73
WHTN	Wheaton Van Lines, Inc., 8010 Castleton Road, Indianapolis, Indiana 46250 (Office of the Manager, International Services)	9-3-75
WTCV	Whitescarver Transportation Corp., Industrial Road, Carlstadt, N. J. 07072 (Office of the President)	7-6-73
WHXP	White Express Co., Inc., The, 176 Flushing Avenue, Brooklyn, New York 11205 (Office of the President)	9-5-75
WHIT	Whitfield Transportation, Inc., 300 N. Clark, El Paso, Texas 79905 (Office of the Executive Vice President)	6-7-73
WIJB	J. B. Williams Express, Inc., 120 Apollo Street, Brooklyn, New York 11222 (Office of the President)	5-20-74
WMSN	Williamson Transportation Inc., 130 Lenox Avenue, Stamford, Connecticut 06906 (Office of the President)	8-28-75
WTGI	Wilson Trucking Co., Inc., 42 Beechwood Road, Oradell, New Jersey 07649 (Office of the President)	8-20-75
WNSW	Windsor Warehouse, Inc., & Windsor Warehouse Trucking Co.,Inc., 315 Coles St. Jersey City, N.J. 07302 (Office of the President)	5-10-73
WTCW	Wooleyhan Transport Co., Inc., 900 S. Heald Street, Wilmington, Del. 19899 (Office of the Vice President)	6-22-73
WOML	Worster Motor Lines, Inc., Gay Road, P. O. Box 110, North East, Pa. 16428 (Office of the Exec. Vice President)	9-10-75
YALT	Yale Transport Corporation, 215 County Avenue, Secaucus, New Jersey 07094 (Office of the General Traffic Manager)	9-18-75
YOTC	York Transportation Company, 2301 Mt. Rose Avenue at Route 83, York, Pa. 17405 (Office of the Treasurer)	9-16-75
	WATER CARRIER SUBSCRIBERS	
AEIU	American Export Lines, 17 Battery Place, New York, New York 10004	4-26-73
MAIL	American Mail Line, (Div. of American President Lines Ltd.) 1010 Washington Bldg., Seattle, Washington 98101	5-7-73
APLS	American President Lines, Ltd., 601 California St., San Francisco, Calif. 94108	8-30-73
ACTU	Associated Container Transport, 90 West Street, New York, New York 10006	4-25-73
BKLU	(The) Bank Line Ltd., 102 Hope St., Glasgow, Scotland	5-16-73
BSSL	Barber S/S Lines, Inc., 17 Battery Place, New York, New York 10004	4-27-73
DSSL	Delta S/S Lines, Inc., 1700 International Trade Mart, New Orleans, La. 70130	6-28-73
FRLM	Farrell Lines, Inc., One Whitehall Street, New York, New York 10004	4-30-73
GCTU	Gulf Container Lines, 400 Sanlin Bldg., New Orleans, La. 70130	4-30-73
GPRS	Gulf Puerto Rico Lines, 4035 Touro Street, New Orleans, La. 70122	4-26-73
JJLU	Japan Line(New York) Ltd., One World Trade Center, New York, New York 10048	8-25-75
KKLU	"K" Line (Kawasaki Kisen Kaisha), One California Street, San Francisco, California 94111	4-23-73
LYKU	Lykes Brothers S/S Co., Inc., Lykes Center, 300 Poydras St., New Orleans, La. 70130	5-27-73
MOLU	Mitsui O.S.K. Lines, Ltd., 1 World Trade Center, Suite 224, N.Y.,N.Y. 10048	4-8-75
MAEU	A. P. Moller - Maersk Line, One World Trade Center, New York, New York 10048	6-28-73
MMLU	Moore McCormack Line, Ltd., 2 Broadway, New York, New York 10004	6-15-73
NYKS	Nippon Yusen Kaisha (NYK Line) One World Trade Center, Suite 5031, New York, N. Y. 10048	5-5-75
NBAC	Norfolk, Baltimore & Carolina Line, Inc., 937 E. Water Street, Norfolk, Virginia 23510	8-13-74
OOLU	Orient Overseas Container Line, Inc., 88 Pine St., New York, New York 10005	7-16-74
PFEL	Pacific Far East Line, Inc., One Embarcadero St., San Francisco, Calif. 94111	4-25-73

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ALPHA CODE	NAME AND ADDRESS OF SUBSCRIBERS	AGREEMENT EXECUTED
	WATER CARRIER SUBSCRIBERS	
PXCU	Phoenix Container Line, One California St., San Francisco, Calif. 94111	4-23-73
PGLU	Prudential Lines, Inc., One New York Plaza, New York, New York 10004	4-16-73
SEAU	Sea-Land Service, Inc., Exec. Plaza Bldg., 10 Parsonage Road, Menlo Park, New Jersey 08817 (Contact V. P. Corporate Truck Operations Division)	4-24-73
STLU	Seatrain Lines, Inc., Port Sea Train, Weehawken, New Jersey 07087	5-14-73
SHWU	Showa Shipping Co. Ltd., 425 California Street, San Francisco, Calif. 94104	4-27-73
USLU	U. S. Lines, Inc., One Broadway, New York, New York 10004	6-28-73
YSLU	Y. S Line (Yamashita-Shinnihon S/S Co. Ltd.), 21 West Street, New York, New York 10006	5-1-73
ZIMU	Zim Israel Navigation Co., Ltd., One World Trade Center, New York, N. Y. 10048	7-9-73
	RAILROAD CARRIER SUBSCRIBERS	
CEIR	Chicago and Eastern Illinois Railroad, 210 N. 13th St., St. Louis, Mo. 63103 (Office of V.P. - TOFC and Truck Service)	1-14-74
MPRC	Missouri Pacific Railroad, 210 N. 13th St., St. Louis, Mo. 63103 (Office of V.P. - TOFC and Truck Service)	1-14-74
SSW	St. Louis Southwestern Railway Lines, P. O. Box 1319, Houston, Texas 77001 (Office of V. P. & Gen. Mgr.)	4-29-74
SPTC	Southern Pacific Transportation Company, One Market Street, San Francisco, California 94105 (Office of the Vice President - Operations)	3-18-74
TM	Texas Mexican Railway Company, P.O. Box 419, Laredo, Texas 78040 (Office of Secretary)	1-21-74
TPRC	Texas and Pacific Railroad, 210 N. 13th St., St. Louis, Mo. 63103 (Office of V.P. - TOFC and Truck Service)	1-14-74
UP	Union Pacific Railroad, 1416 Dodge Street, Omaha, Nebr. 68179 (Office of Vice President - Operations)	2-8-74

GENERAL COUNSEL'S EXHIBIT No. 38

UNITED STATES LINES, INC.

P.O. Box 3066 Norfolk, Virginia 23514
(804) 489-2800 Cable Seapost

October 11, 1974

Associated Transport Inc.
1424 Air Rail Ave.
Virginia Beach, Va.

S/S American Legion V57
S/S American Aquarius V20

Gentlemen:

We have been advised by the International Longshoremen's Association that the containers listed on the attached sheet were stripped at your terminal. As you know, this is in violation of our contract with the ILA.

Should you have information in your possession that would indicate the information from ILA is in error, please let us have same as soon as possible. Hampton Roads Shipping Association will arrange a meeting with the ILA within the next week or ten days to discuss this violation.

This will serve to advise you that we will hold Associated Transport Inc. responsible for any fine imposed by the ILA as a result of your actions.

Very truly yours,

UNITED STATES LINES, INC.

/s/ F. W. Babb
F. W. BABB
Port Manager

FWB:ev
Att.

cc: Mr. L. H. Pert/New York
Mr. K.Elder/New York
Mr. L. Steigelman/New York
Mr. H. Queen/Norfolk

S/S American Legion V57 Discharged Norfolk
October 1, 1974

USLU 4171866
CTIU 292431
USLU 4201261
CTIU 2006604

S/S American Aquarius V20 Discharged Norfolk
September 24, 1974

SCIU 4025416
USLU 2091078
USLU 2011961
USLU 4205518

GENERAL COUNSEL'S EXHIBIT No. 39

127-129 Dank Street

Norfolk, Virginia 23510

Phone (804) 622-2639

November 7, 1974

Mr. F. Wilson Babb, Port Manager
United States Lines, Inc.
P. O. Box 3066
Norfolk, Virginia 23514

Dear Mr. Babb:

At the meeting of the Joint Container Grievance Committee, October 31, 1974, the ILA allegations that the following containers had been handled in violation of the Rules on Handling of Containers was duly considered and unanimously upheld:

CTIU 292431
USLU 4171866
USLU 2006604
USLU 4201261
SCIU 402541
USLU 2011961
USLU 2091078
USLU 4205518

The prime reason for imposing a violation on these containers was due to the fact that Associated Transport, Inc. representatives at the meeting would not clarify as to whether the containers were stripped within the 50 mile radius or delivered to the respective destinations, but only stated that they supported the contents of the letter from the Tidewater Motor Carriers Association dated June 7, 1974.

Therefore, in accordance with the terms and conditions of the contract the $1,000 penalty was imposed on each of the nine containers by the joint Container Grievance Committee and you should submit a check to the HRMA-ILA Container Royalty Fund covering the penalty.

Sincerely yours,

/s/ Jack W. Mace
JACK W. MACE
Executive Secretary

JWM/Bh

GENERAL COUNSEL'S EXHIBIT No. 40

UNITED STATES LINES, INC.

For Office Correspondence Only

File No.

Norfolk Office

November 8, 1974

Mr. K. Edler
Manager, Interline and Leasing
Intermodal Equipment
One Broadway—New York

S/S American Legion Voy. 67
S/S American Aquarius Voy. 20

Dear Mr. Edler:

We attach letter from Hampton Roads Shipping Association advising of fine in the amount of $8,000.00 imposed upon U. S. Lines as a result of Associated Transport Inc. stripping eight containers at their terminal within the 50-mile radius of Norfolk in violation of our contract with the I.L.A.

Understand you will handle further with Associated Transport Inc. * * * * * * * * *there. We are forwarding copy of this letter to their Virginia Beach Terminal for ther information.

Very truly yours,

/s/ F. W. Babb
F. W. BABB

[Illegible]
Att.

cc: Associated Transport Inc./Virginia Beach
Mr. L. H. Pert/New York
Mr. L. Steigelman/New York
Mr. H. Queen/Norfolk

GENERAL COUNSEL'S EXHIBIT No. 41

January 3, 1975

Associated Transport Inc.
1424 Air Rail Ave.
Virginia Beach. Va.

S/S American Legion V57
S/S/ American Aquarius V20

Gentlemen:

This has reference to our letter of October 11, 1974, in which we advised of claim by the International Longshoremen's Association that certain containers were stripped at your terminal in violation of our contract with the ILA.

We now attach letter from the Hampton Roads Shipping Association advising of the action taken and our invoice in the amount of $8,000.00, which covers fine imposed by the ILA.

Please let us have you check to cover at your earliest convenience.

Very truly yours,

UNITED STATES LINES, INC.
F. W. BABB
Port Manager

FWB:ev
Atts.
cc: Mr. L. H. Pert—New York w/Atts.
Mr. K. Edler—New York w/Atts.
Mr. L. Steigelman—New York w/Atts.
Mr. H. Queen—Norfolk w/Atts.

Associated Transport Inc.

No. ————————

1424 Air Rail Ave., Virginia Beach, Va.

UNITED STATES LINES, INC.

P. O. BOX 3066

To penalty imposed by International Longshoremen's Association for (8) eight containers stripped at Associated Transport Terminal in Virginia Beach in violation of ILA contract per copy of letter dated Nov. 7, 1974, from Hampton Roads Shipping Association attached.

(8 containers @ $1000.00 ea. violation) $8000.00

S/S American Legion V57 Dicharged Norfolk 10/1/74:

USLU 4171866	CTIU 292431
USLU 4201261	CTIU 2006604

S/S American Aquarius V20 Dicharged Norfolk 9/24/74:

SCIU 4025416	USLU 2091078
USLU 2011061	USLU 4205518

GENERAL COUNSEL'S EXHIBIT No. 42

UNITED STATES LINES, INC.

P. O. Box 3066 Norfolk, Virginia 23514

(804) 489-2800 Cable Seapost

February 14, 1975

Associated Transport Inc.
1424 Air Rail Ave.
Virginia Beach, Va.

S/S American Legion V57
S/S/ American Aquarius V20

Gentlemen:

In consideration of not receiving any reply to our letter of February 5, 1975, under the same subject, we must discontinue, after today, the interchange of equipment with you until the situation involved is settled.

Very truly yours,

UNITED STATES LINES, INC.

/s/ F. W. Babb
F. W. BABB
Port Manager

FWB:ev

cc: Mr. L. H. Pert—New York
Mr. K. Edler—New York
Mr. L. Steigelman—Port Elizabeth
Mr. H. C. Queen—Norfolk

GENERAL COUNSEL'S EXHIBIT No. 43

[SEAL]

UNITED STATES LINES, INC.

One Broadway, New York, N. Y. 10004
(212) 344-5800 Cable: Seapost

March 20, 1975

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Associated Transport, Inc.
380 Madison Avenue
New York, N. Y. 10017

Re: S. S. American Legion Voyage 57 discharged Norfolk October 11, 1974 Container Numbers USLU 4171866, USLU 4201261, CTIU 292431, CTIU 200660.

S. S. American Aquarius Voyage 20 discharged Norfolk September 24, 1974 Container Number USLU 2091078, USLU 4205518,. USLU 201961 and SCIU 4025416

Gentlemen:

On Januray 3rd our Norfolk office wrote to Associated Transport, Inc. Virginia Beach, Virginia advising that United States Lines had been fined by the International Longshoremen's Association the amount of $8,000.00 representing fines covering the above eight (8) containers which were stripped by Associated Transport, in violation of our ILA contract. Attached with the January 3rd letter was our invoice in the amount of $8,000.00 as well as a letter from the Hampton Roads Shipping Association.

Associated had been notified of impending fines with October 11, 1974 letter from of Norfolk office.

I discussed this matter early in October of 1974 with Mr. J. Ryan, Vice President Sales & Marketing of Associated Transport. As a result of this conversation, I received a letter dated October 18, 1974 from John R. Dunbar, Senior Vice President Associated Transport in which Mr. Dunbar advised that Associated will immediately discontinue shipping containers at Norfolk. He also assured that if there were any penalties they would cooperate fully.

Our Norfolk office followed up their January 3rd letter with another one dated February 5th, requesting the favor of a reply.

As of today's date, we have had no reply at all.

I have had a visit from Mr. Collins of Associated during which he asked that we extend the deadline for payment of these fines. I do not have a record of the exact date of my meeting with Mr. Collins but it must have been sometime during the last week of February. Mr. Collins explained the involvement of the present merger activities of Associated Transport and Eastern Freightways. I made it quite clear to Mr. Collins at the time that while we were prepared to extend the deadline for payment for a two or three week period, we could not wait indefinitely and advised him further that we would have to take action against both Associated Transport and Eastern Freightways.

Not having been favored with any official reply, you leave us no alternative but to cancel the Interchange Agreement presently in force between Associated Transport and United States Lines. This cancellation does not relieve you of your obligation which you may still have to United States Lines under the above agreement.

We regret having to take this action but your stand in this matter leaves us no choice.

Very truly yours,

/s/ Klaus W. Edler
KLAUS W. EDLER
Manager, Interline and Leasing

KWE:cs

cc: Mr. L. M. Steigelman
Messrs. Babb/Queen
Mr. G. Maier
Mr. H. Corry
Mr. L. Pert
Mr. W. J. Klauberg
Mr. R. B. Murphy

cc: Eastern Freightways
Eastern & Moonachie
[Illegible], New Jersey 07072

cc: Associated Transport, Inc.
1424 Air Rail Avenue
Virginia Beach, Va.

GENERAL COUNSEL'S EXHIBIT No. 44

UNITED STATES LINES, INC.

One Broadway, New York, N. Y. 10004
(212) 344-5800 Cable: Seapost

October 1, 1970

Associated Transport Inc.
380 Madison Avenue
New York, N. Y. 10017

Attention: Mr. C. C. Brock
Mgr.—Interline Traffic

Dear Sir:

On May 6, 1969, Associated Transport Inc. and U. S. Lines mutually agreed to an addendum to our Equipment Interchange Contract, whereby Associated Transport would be billed a maximum of four (4) days per diem for use of U. S. Lines equipment regardless of length of time kept out providing the utilization of same is not abused.

Upon review of per diem bills at New York and Baltimore I find many instances where our equipment has been signed out to your company with a "carte blance" so to say agremeent, and equipment had been retained by your company many times over one month.

You are hereby given notice effective start of business October 5, 1970, that U. S. Lines will not honor the May 6, 1969 addendum and revert back to "Table of Charges and Schedule of Rates" incorporated in our Equipment Interchange Contract for the collection of per diem charges.

Very truly yours,

/s/ Timothy D. Foley
TIMOTHY D. FOLEY
Manager—Interline Billing

TDF:sw

cc: Mr. R. B. Murphy New York
Mr. V. Barba New York
Mr. J. P. Shull New York
Mr. G. Maier Baltimore
Mr. H. Queen Norfolk
Mr. G. Shea Boston
Mr. M. Heffernan Philadelphia

[Addendum I cancelled per letter from United States Line, Inc. dated 10/1/70. Apply their standard charges effective 10/5/70.]

ADDENDUM # I

TO

EQUIPMENT INTERCHANGE AGREEMENT

BETWEEN

UNITED STATES LINES INC.,

AND

ASSOCIATED TRANSPORT INC.,

ENTERED INTO MAY 6TH, 1969

In consideration of the mutual undertakings contained in the Equipment Interchange Agreement between United States Lines Inc., and Associated Transport Inc., dated May 6th, 1969, and in consideration of the undertakings herein contained and of other good and valuable consideration, receipt of which is hereby acknowledged, and the provisions of The Table of Charges and Schedule of Rates as referred to in Paragraph Nine are hereby waived and the following provisions substituted:

> Lesee agrees to pay Lesser rental charges as set forth below for all equipment interchanged pursuant to United States Lines Inc., Equipment Interchange Agreement, Said rental charges shall accrue on a per diem basis for each period of Twenty-Four hours or fraction thereof, Saturdays, Sundays, and legal holidays excepted, subject to a maximum charge of four (4) calendar days.

The per diem charges shall be as follows for the equipment indicated:

Item 1	20 Foot single axle chassis with 20 Foot container	2.50
Item 2	20 Foot Tandem axle chassis with 20 Foot Container	3.50
Item 3	40 Foot tandem axle chassis with 40 Foot Container	5.00
Item 4	40 Foot tandem axle chassis equipped with demountable diesel driven electric generator unit, 75 Gallon fuel tank, and 40 foot container	15.00

ASSOCIATED TRANSPORT, INC.
as Lessee:

By /s/ C. C. Brock

UNITED STATES LINES INC.,
as Lesser:

By /s/ Robert G. Partos,
R. G. Partos, Manager, Interline Operations
Container Department

UNITED STATES LINES, INC.

EQUIPMENT INTERCHANGE AGREEMENT

THIS AGREEMENT made this 6th day of May, 1969

between UNITED STATES LINES, INC., a Delaware corporation, hereinafter referred to as "lessor" and ASSOCIATED TRANSPORT, INC., a Delaware corporation, hereinafter referred to as "lessee".

WITNESSETH:

WHEREAS, it is contemplated that the lessor will let and deliver to the lessee and the lessee will hire and accept from the lessor certain containers and/or chassis for transportation by the lessee over highway routes, and

WHEREAS, the parties desire to enter into an agreement concerning the use, operation and interchange of such containers and chassis;

NOW, THEREFORE, for and in consideration of the terms and conditions hereinafter set forth, it is mutually covenanted, stipulated and agreed by the parties as follows:

FIRST: The term "container" shall mean any closed container, van or box used by lessor for the carriage of goods, merchandise and cargo; and the term "chassis" shall mean any load-carrying vehicle without power.

SECOND: Lessor shall, from time to time, deliver to lessee containers which have been placed upon lessor's chassis or containers alone without chassis for transportation upon lessee's vehicle. Containers may or may not be loaded with cargo at time of interchange or delivery between the parties. Containers or chassis shall be interchanged or delivered for transportation at lessor's terminals or at such other point or points as may be mutually agreed upon between the parties from time to time.

THIRD: At the time of interchange authorized representatives of the lessor and lessee shall make an inspection

of each container and/or chassis and shall jointly execute an "Equipment Interchange Receipt and Inspection Report", a blank copy of which is appended hereto as Exhibit "A". The condition of such container and/or chassis, and any damages, defects or exceptions noted at the time such inspection is made, shall be noted on the said Equipment Interchange Receipt and Inspection Report. Each container and/or chassis shall again be carefully inspected by authorized representatives of lessor and lessee upon return and redelivery of such container and/or chasssis by lessee to lessor and the condition thereof and any damages, defects or exceptions noted at the time of such return and redelivery, shall also be noted upon the original Equipment Interchange Receipt and Inspection Report. Any changes in condition, and any additional damages, defects or exceptions noted at such latter inspection shall also be noted upon a "Equipment Damage Report", to be jointly executed by authorized representatives of the lessor and lessee, a blank copy of which is appended hereto as Exhibit "B". For the purpose of determining whether a particular container or chassis has in fact been damaged between the time of delivery to lessee, the parties to this agreement shall be bound by the aforesaid Equipment Interchange Receipt and Inspection Report and Equipment Damage Report, and subject to the provisions hereof, lessee agrees to assume full responsibility for such damages, defects or changes of condition and shall, within fifteen (15) days after date of billing, reimburse lessor for the cost of restoring the container or chassis to its original condition, ordinary wear and tear excepted. The person (including tractor driver) receiving or delivering any container or chassis is deemed to be an authorized representative of lessee.

FOURTH: The lessee shall:

(a) complete promptly and expeditiously the use for which the containers or chassis has been furnished to it and return the container or chassis to the terminal of the lessor from which it was received or to such other point as may be shown on the Equipment Interchange Receipt and Inspection Report or otherwise mutually agreed in writing;

(b) not permit any container or chassis to leave its custody and possession without permission of the lessor in writing, and then only to the extent of such written permission;

(c) comply with any and all appropriate formalities and requirements regarding the use, operation or transportation of the containers or chassis;

(d) be responsible to the lessor for the performance of this agreement by itself and by all other persons into whose possession any such container or chassis may go until its proper return to the lessor;

(e) have complete control and supervision of such containers or chassis while in its custody and possession, and shall control the detail of the work of any employee or agent operating or using said containers or chassis during such time any person operating, transporting, in possession of, or using any such container or chassis after the signing of said Equipment Interchange Receipt and Inspection Report and until such form is again signed upon return of the container or chassis to the lessor is not the agent or employee of the lessor for any purpose whatsoever; and

(f) hold the lessor harmless and reimburse the lessor for any loss of or damages to any container or chassis and hold harmless and indemnify the lessor from any and all liability for bodily injuries, death, loss, damage and expense to persons or property arising out of the use, operation, maintenance or possession by the lessee of any such container or chassis or cargo or properties carried therein during the entire period the container or chassis is not in the actual custody and possession of the lessor and shall hold harmless and indemnify the lessor from any and all responsibility and liability arising out of damage to or loss of cargo or property carried in any such container or chassis while said container or chassis is not in the actual custody and possession of the lessor.

FIFTH: It is further agreed that:

(a) The lessor shall equip each chassis delivered to lessee with tires and if tubeless tires are not furnished, with tubes, of proper size and which are in such condition

as will permit the safe operation of the chassis. Thereafter, until such time as the chassis is returned to the lessor repairs to the tires and tubes shall be made by and at the sole expense of the lessee. In the event of a blowout or a total failure of a tire or tube, lessee shall furnish replacement tires and tubes to permit the return of the chassis to the lessor, but shall retain such replacement tires and tubes upon redelivery of the chassis to the lessor. The blown out or unserviceable tire and tube shall be returned to the lessor with the chassis. In the event that the lessee shall fail to return the blown out or unserviceable tire or tube, the lessee shall pay to the lessor the value of each such tire or tube at the time of original interchange. In the absence of specific information to the contrary, it is agreed that the value of each tire at the time of original interchange is $90.00 U.S., and that the the value of each tube is $10.00 U.S.

(b) In the event of mechanical failure or other failure due to defective equipment on a chassis, the lessee shall make such repairs as may be necessary; provided, however, the the lessee shall secure the approval of the lessor before making any repairs, the estimated cost of which will exceed $100.00 U.S. When the cost of such repairs as may be necessitated by mechanical failure or defective equipment is less than $25.00 U.S., the lessee shall make such repairs at its own expense. Where the cost of such repairs exceeds the sum of $25.00 U.S., the lessor shall be responsible, and shall promptly reimburse the lessee upon receipt of a bill reflecting such a payment. The aforesaid bill shall indicate in detail the nature of the repair and shall state separately the sum expended for labor and parts.

(c) Lessor shall equip each chassis delivered to lessee with such vehicle license plates and/or registration certificates as appropriate government laws or regulations may require it as a chassis owner to furnish and, in addition, each chassis shall be equipped with satisfactory mud flaps, working directional signal lights, clearance markers, reflectors and such other equipment as is necessary to comply to the extent required, with pertinent government safety regulations.

(d) The lessor does not make an warranty or representation, either express or implied, as to the fitness or condition of any chassis or container or the contents thereof.

(e) At the time of interchange of a loaded container under heat or refrigeration the mechanical units shall have sufficient oil and fuel to insure forty-eight (48) hours continuous operation.

(f) Fuel and oil used in providing refrigeration or heat shall be replaced by the lessee at the time a mechanically refrigerated or heated container is returned or interchanged by lessee. If lessee fails to replenish the fuel and oil supply of the refrigerated or heated container lessee shall, unless otherwise agreed upon between the parties involved be liable for and shall pay the cost of the fuel and oil consumed.

(g) When a refrigerated or heated container that has moved unpacked perishable commodities under refrigeration or heat is unloaded by lessee, is shall, unless otherwise agreed upon between the parties involved, be steam cleaned by lessee.

(h) Lessee shall be responsible for the full maintenance and repair of the diesel electric generator sets, nose mount temperature control unit including temperature recorder and thermostat, furnished in connection with containers leased hereunder. In the event a repair is necessitated by a defective part, lessor shall reimburse lessee for the reasonable cost of said part upon delivery of the defective part by lessee to lessor, provided, however, that the cost of all labor and materials other than the reimbursable cost for the defective part shall be borne by the lessee.

SIXTH: The lessor and lessee agree that the interchange of each container and chassis shall be compensated for in accordance with the Table of Charges and Schedule attached hereto and made a part hereof. Except as otherwise provided, the terms of this agreement shall become operative with respect to the lease of the particular container and/or chassis upon the execution by the lessee of said "Equipment Interchange" Receipt and Inspection Report." Settlement shall be made by the lessee within ten (10) days following the date of lessor's invoice. Daily charges shall continue to accrue, notwithstanding the fact

that a container or chassis has been withdrawn from service for repairs, except in those cases in which the nature of the repair is such that the lessor is required under the terms of this agreement to bear the cost thereof. In the event of the loss of, theft of, total destruction of, or irreparable damage to a container or chassis, the daily charges shall cease as of the date of such loss, theft, destruction, or irreparable damage.

SEVENTH: The lessee agrees to keep the container and chassis free of any and all liens and encumbrances.

EIGHTH: The lessee agrees at its sole cost and expense to keep and maintain said containers and chassis in good repair and operating condition and return the containers and chassis to lessor in the same good order and condition as when received, ordinary wear and tear excepted. In the event of damage to a container or chassis for which the lessee is responsible under the terms of this agreement, the lessee shall, at its expense, restore the damaged container or chassis to a condition consistent with that condition that prevailed at the time of original interchange from lessor to lessee. In the event that the lessee shall fail to make such repairs, it shall nevertheless be responsible for the cost of such repairs and for the continued payment of daily charges until the repairs are completed even though the container or chassis may have been returned to lessor with the understanding that lessor will make the repairs.

In the event a container or chassis is lost, stolen, totally destroyed, or irreparably damaged between the time of its interchange and delivery to lessee and its return to lessor, the lessee agrees to reimburse the lessor an amount equal to the depreciated book value of said container or chassis on the date of said loss, theft, destruction, or irreparable damage, but not less than the fair market value of said container or chassis on said date.

NINTH: This instrument and the attached Table of Charges and Schedule, the Equipment Interchange Receipt and Inspection Report and the Equipment Damage Report shall constitute and contain the entire agreement between the parties and no agreements, representations

or understandings not specifically contained herein shall be binding except as contained herein or reduced to writing and made amendatory hereof.

TENTH: Either party to this agreement may terminate the same at any time by giving the other party ten (10) days' written notice of such termination by registered or certified United States mail, provided, however, shall remain in effect until after all containers and chassis leased hereunder have been properly delivered to and accepted by lessor.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

WITNESSES AS TO LESSOR: UNITED STATES LINES, INC.
as Lessor

_____ By: /s/ Robert G. Partos
ROBERT G. PARTOS
Manager, Interline

_____ Attest:

WITNESSES AS TO LESSEE: ASSOCIATED TRANSPORT, INC.
as Lessee

/s/ Virginia I. Oates By: /s/ C. C. Brock
Manager of
Interline Traffic

_____ Attest:

TABLE OF CHARGES AND SCHEDULE OF RATES

Lessee agrees to pay lessor rental charges as set forth below for all equipment interchanged pursuant to United States Lines Inc.'s Equipment Interchange Agreement. Said rental charges shall accrue on a per diem basis for each period of 24 hours or fraction thereof, Saturdays, Sundays and legal holidays excepted, commencing with the second 7 a.m. after date of receipt of equipment by lessee. The per diem charges shall be as follows for the equipment indicated:

EQUIPMENT		PER DIEM CHARGE
Item 1	20 Foot Single Axle Chassis with 20 Foot Container	$ 2.50
Item 2	20 Foot Tandem Axle Chassis with 20 Foot Container	$ 3.50
Item 3	40 Foot Tandem Axle Chassis with 40 Foot Container	$ 5.00
Item 4	40 Foot Tandem Axle Chassis equipped with demountable diesel driven electric generator unit, 75 gallon fuel tank, and 40 Foot Container	$15.00

It is understood and agreed between the parties that lessee shall pay lessor the above per diem charges in accordance with paragraph 6 of the Equipment Interchange Agreement and that such charges shall be assessed for each day, Saturdays, Sundays, and legal holidays excepted, that the container and chassis remains in the possession of lessee. Should a container and chassis be retained by lessee for a period in excess of 10 consecutive calendar days, Saturdays, Sundays and legal holidays included, the per diem charge applicable to the 11th and 12th day shall be double the amount stated herein and a charge of 3 times the normal per diem charge stated herein shall apply for every day in excess of the 12th consecutive calendar day; provided, however, that the penalty charges as stated above shall not apply on Saturdays, Sundays and legal holidays.

UNITED STATES LINES, INC. No. 42301

ORIGINAL EQUIPMENT INTERCHANGE RECEIPT AND INSPECTION REPORT

VESSEL		CONTAINER NO.	CHASSIS NO.	BOGIE	TGT NO. (INTL. LIC. NO.)

TO CARRIER

(THIS PORTION OF REPORT IS TO BE COMPLETED AT TIME OF INTERCHANGE)

CARRIER RECEIVING CONTAINER AND/OR CHASSIS

TRACTOR NO.	LICENSE NO.	SEAL NO.

BOX (Circle One)	GROSS WEIGHT
LOADED EMPTY	

CONDITION OF CONTAINER AND CHASSIS

(REGULATIONS REQUIRE THAT EACH PART LISTED BE INSPECTED. IF NO EXCEPTIONS, USE CHECK (√) MARK).

BRAKES
LANDING GEAR
WHEEL LUGS
LIGHTS
UNDERCARRIAGE
DOORS
FLAPS

TIRES	POSITION	BRAND NO. & CONDITION	POSITION
	R.O.		L.O.
	R.I.		L.I.
	R.O.		L.O.
	R.I.		L.I.

INSPECTED BY

DATE AND TIME

LESSEE'S REPRESENTATIVES SIGNATURE (Driver, Etc.).
RECEIVED IN GOOD CONDITION, EXCEPT AS NOTED.

FROM CARRIER

(THIS PORTION OF REPORT IS TO BE COMPLETED UPON REDELIVERY)

CARRIER REDELIVERING CONTAINER AND/OR CHASSIS

TRACTOR NO.	LICENSE NO.	SEAL NO.

BOX (Circle One)	GROSS WEIGHT
LOADED EMPTY	

CONDITION OF CONTAINER AND CHASSIS

(REGULATIONS REQUIRE THAT EACH PART LISTED BE INSPECTED. IF NO EXCEPTIONS, USE CHECK (√) MARK).

BRAKES
LANDING GEAR
WHEEL LUGS
LIGHTS
UNDERCARRIAGE
DOORS
FLAPS

TIRES	POSITION	BRAND NO. & CONDITION	POSITION
	R.O.		L.O.
	R.I.		L.I.
	R.O.		L.O.
	R.I.		L.I.

IS AN EQUIPMENT DAMAGE REPORT BEING SUBMITTED HEREWITH? CHECK ONE: ☐ YES ☐ NO
IF YES, STATE REPORT NO. _____

INSPECTED BY

DATE AND TIME

LESSEE'S REPRESENTATIVES SIGNATURE (Driver, Etc.).
DELIVERED IN GOOD CONDITION, EXCEPT AS NOTED.

ACCOUNTING CODE
SUBSIDIARY ACCOUNT 660.21
CARRIER CODE NUMBER _____

DATE OF BILLING

Total Period of Interchange:

Amount Due

..... days @ $ ..... per day ..... $ .....
..... days @ $ ..... per day ..... $ .....
..... days @ $ ..... per day ..... $ .....

....
Pay This Sum
$ .....

41-4-M 11-68

EQUIPMENT CONTROL — (UPON RETURN)

RESPONDENT'S EXHIBIT NO. 1

Norfolk, Virginia
December 15, 1969

A joint meeting of the Employers' Negotiating Committee and representatives of the International Longshoremen's Association was held in the offices of the Hampton Roads Maritime Association at 2:00 P.M. on Monday, December 15, 1969.

Present the following:

Employers' Negotiating Committee:
L. E. Pentecost, Chairman

Representing Steamship Agents:
Ellesberry R. Bunch
Thomas W. Rabeau
David M. Ritter

Representing Stevedores:
Edwin J. Adams
Joseph A. Boroody
Charles R. Chambers
J. Elmore Eubank, Jr.
George C. Garris

Braden Vandeventer, Attorney
Jack W. Mace, Executive Secretary, HRMA

I.L.A. Committee:
Myles E. Billups
Edward L. Brown
Alvah Merrit
Robert Snowden, Local 1840
C. B. Campbell, Local 1624
Oscar Syemore, Local 1458
James J. Lumpkins, Local 1458
James A. Smith, Local 970

Sidney Kelsey, Attorney

The meeting, involving the Container Clause, was called to order by Mr. L. E. Pentecost who stated that a letter received from Mr. Alston under date of December 10th, carried some items that were not understood by the employers and some things that were false. He cited the matter of fictitious documents and stated that he did not know who had filed them, as stated on the second page of Mr. Alston's letter. Mr. Alston's letter stated "we have evidence that the employers and signatories to the contract have and are continuously violating Rule 5 and are using and changing documentation and making fictitious entries to evade the container contract." Mr. Pentecost said that he thought all of them, as signatories to the contract, had the right to know who would prepare fictitious documents because to do so he would

be flirting with customs regulations and with serious trouble if such were true.

The second thing in the letter from Mr. Alston was the employers had refused to meet, the Chairman stated. At this time, Mr. Pentecost read from minutes of the November 10th meeting of the Joint Committee as follows:

"Mr. Billups stated, 'that is why I said there is no point in our getting into a discussion on this because we are going to hang up on this. We are beginning to get on each others nerves. Let's let it die. We are getting too involved. You have made up your minds that you are right in what you are doing. You are saying the ILA has no voice in the matter,' The Chairman asked that Mr. Mace get an expression from other ports concerning this handling of the operation in question and Mr. Billups was in favor of this suggestion.

"Mr. Alston asked if his understanding was correct that the employers were willing go along with precedents set in other ports, and Mr. Pentecost commented 'Mr. Mace will make inquiry about this, set it up on the basis of the facts, and ask what they do under similar circumstances. There is no intention on our part to take work away from the ILA, but when a box comes in on a house-to-house bill of lading, the man doesn't want it opened until it reaches his house.' He noted that pilferage on Far East cargo was terrific. On the other hand, Mr. Billups noted, 'we are not accusing the steamship operators. We are saying the operation is going on and we want classification on it. We are not accusing anyone of circumventing the contract.'" Mr. Pentecost stated that "the minutes right here refute that we refused to talk about it."

Mr. Billups remarked that they were not in a court of law—certain statements were made but they were not allowed to answer, and he could not remember all of the things that Mr. Pentecost had read. He said that Mr. Pentecost started out on page two of Mr. Alston's letter and then he read from the minutes.

Mr. Billups stated that the movement of containers was being changed on the bills of lading after they were entered. "Where they are marked pier-to-pier they are changed to pier-to-house and sent on to D. D. Jones—these are the things—the documents the checkers get. On Customs entry it was changed afterwards from Pier-to-Pier to Pier-to-House." Mr. Rabeau said "That is right, they are changed from house-to-house and pier-to-pier—it is changed by the shipper or consignee and that is not fictitious documents."

Mr. Billups said "we are saying that the container markings are changed to take containers inland to stuff and strip them. You do not have any right to do so at Southgate, D. D. Jones or Commonwealth Corrugated where they are being unloaded. We said within 50 miles —Commonwealth is a consolidator and he is stripping containers. What we are saying, we said before when we argued about D. D. Jones on what was right and wrong.

We got off that and into long arguments on packers and forwarders and all he was interested in was his containers. I said it was no need of arguing if he is guilty, so is the other one. We will find out and so we want to find out if the employers have done anything else on it. You have known what the ILA demands were and you have done nothing about it." Mr. Rabeau retorted "you have accused me of falsifying documents."

Mr. Billups replied "you can hang up all you want on that one word—a letter does not change the complexion of this particular dispute. I knew you were going to hang up on it." Mr. Rabeau stated "you are accusing me of changing documents." Mr. Alston remarked that they were in here not as enemies but as friends. Again Mr. Rabeau stated that they gave the ILA the documents at the time the papers were made up. The union said that the particular containers that were Mr. Rabeau's were down at Commonwealth Corrugated and being loaded and that was circumventing the contract when Commonwealth Corrugated was not the beneficial owner of the cargo. They said that American Export and U. S. Lines' containers were showing up at D. D. Jones and Southgate where they were being stripped.

Mr. Adams stated that it was not the steamship people who were sending these boxes to Southgate and D. D.

Jones—the freight forwarders were sending them—the Steamship people did not control where the containers went. The signatories to the contract agreed to protect the right of the ILA—the forwarders have control over the containers.

Mr. Rabeau stated that Mr. Alston listed five containers in his letter and they all were listed on the document as house-to-house and asked where he had changed the documents. Mr. Merritt replied that they were stripped at Commonwealth Corrugated and that Commonwealth did not have the right to receive them no matter what Genesco said. The union said the forwarders did not have a right to contract their work out to other people.

Mr. Pentecost said that he thought they were hung up on two things. Then he read Clause 8 of the Container Contract and said this was a little more involved than they thought—"If the purpose of protecting and preserving the present work jurisdiction of longshoremen and all other deepsea ILA crafts over any containers loaded with LTL cargo, or consolidated full container loads as defined herein * * *" He stated "This is not LTL cargo. What you have made your drive against is the consolidation of various shipments that go into a container. We will go to the matter of J. C. Penney. J. C. Penney packed their boxes at point of origin—those containers contain J. C. Penney goods—they are not consolidated shipments in that box. It is one beneficial owners' goods in that box therefore it is not LTL."

Mr. Billups said that the Clause 8 of the contract did not say LTL, it also said "* * * or consolidated full container loads * * *." Mr. Pentecost said "when the container comes in from the Far East it is full of J. C. Penney goods, therefore it is not an LTL shipment—if the box is full of J. C. Penney goods and J. C. Penney is the beneficial owner of the cargo and consigned to him at warehouse of his choice—we cannot open it up."

Mr. Billups stated that according to the contract D. D. Jones did not have the right to receive the cargo. Question was asked as to what was meant by LTL and the reply was LTL means less than truckload.

Mr. Rabeau then remarked that Mr. Billups had said that D. D. Jones had no right to receive the cargo but the steamship agents had no right to say who received the cargo for J. C. Penney—he could store it at D. D. Jones. Mr. Rabeau said "we say we have the right to unload it at the pier and then D. D. Jones can take it and store it for them."

Mr. Billups stated that on the matter of pilferage of cargo, he was tired of hearing this, "the union was not full of all thieves—we do not have a port full of thieves and the same thing about changing documents." He said half of the cargo could be stolen by the consolidators. "We checked the ICC on the Commonwealth Corrugated and earlier in the year they announced they were going out of business and then he starts getting in on our business unloading our containers." Mr. Pentecost asked "why don't you unionize him."

Mr. Billups said "it's a bunch of people out of Richmond and they come down and set up a consolidating and stripping business. He gets to these people, the beneficial owners, and say 'let me receive your cargo' but he has no right to say he can receive cargo in lieu of our contract. The steamship people are contracting it out to these people." Mr. Bunch replied that the steamship people had nothing to do with it.

Mr. Pentecost said "when you go to ship something—whether you ship it by mail or whether by air or whatever, there are certain rules that must be lived up to by the shipper. He says he can give you a certain rate for one thing and another for something else. I am shipping the thing but I have to qualify for a certain rate. On the other hand, the U.S. Mails have certain rules and certain contracts that have to be lived up to. I can't run in and take over just because I have some cargo to ship. We have a contract with the ILA that if you are receiving cargo at your own factory or at your own plant, then you can qualify for a house-to-house movement but if you do not have your own plant in the location of the terminal and you are not receiving it at your own plant—you decide you will store it with some other company and your box has to be stripped. It has to move on a pier-to-pier move-

ment and then you can have whatever shipment you want to ship it to the warehouse." If the shipping industry is doing it that way then the forwarders will not be running wild.

Mr. Rabeau commented that the Chairman had a copy of a tariff on the rules and regulations of cargo in containers—#33 FMC #1, 4th revised page which was reviewed. Mr. Billups stated that did away with the consolidator right there.

Mr. Pentecost stated that the shipper must place a seal on each container and that took the control and responsibility of the cargo in that container from the carriers. Mr. Billups stated "not totally—when the shipper says that they would rather mark it house-to-house, it takes the responsibility of whether anything is missing—it relieves the shipping man from that responsibility as long as he does not have any responsibility for the supervising of the unloading of it."

Mr. Kelsey stated "If a container comes in here and in the container there are half a dozen different types of cargo consigned to half a dozen different people—when this box gets here and it is sent to D. D. Jones or Commonwealth, is that a violation of the contract?" Mr. Rabeau replied "that is stripped at the pier."

Mr. Billups stated that he had received report of sixty containers of U. S. Lines—40 of them for Hiden Storage & Forwarding on Warwick Boulevard to be stuffed. Mr. Pentecost stated that the space he was talking about was rented to tobacco people and the ILA could not get around that.

Mr. Pentecost said "you have the idea that we are trying to protect the consolidators and we are trying to violate the contract we made. This is not so. In essence when a man ships cargo from the other side he makes booking and he sends the cargo to the pier and gives the steamship man a bill of lading. You sign it and give him the bill of lading for the cargo when the cargo comes to his side and gets to the pier. Whether break bulk or what, he turns in his original bill of lading and according to the steamship rules and regulations, when he gives you that bill of lading, that cargo is his to do with what he

wants to. In this case 95% of the cases are turned over to the freight forwarders or customhouse brokers and from that point on the movement of that cargo is under his control. The cargo is signed for upon arrival and interchange agreement is made and the cargo is shipped out. It is booked and paid for as pier-to-house, pier-to-pier or house-to-house. The man pays the freight and picks up the cargo and he has the right to designate where it goes." Mr. Ritter said it has been agreed that they did not fight the consolidator—this was a situation and how could anybody say how they were going to control this—and the steamship people did not know how they could control it 100%. The steamship people turned the job over to the freight forwarders for handling.

Mr. Kelsey inquired "you turn it over to him on the pier, who puts it on the pier?" Mr. Ritter replied "we put it on the pier—the stevedore and the ILA."

Mr. Billups stated "some of the things you are saying are beautiful. Here is what I am saying to you. If we continue down the path we are going—allowing these freight forwarders and brokers and consolidators and who ever else can find a way to get into the business to get a piece of the action and we keep on allowing consignees to go down there and say 'I lease space in Jones' warehouse and I lease space in so and so's warehouse. Everybody is leasing space—all you have to do is catch him unloading the containers and he has leased the space. We have been unloading the cargo all these years and maybe we have not been the best but we have not been the worse. All of a sudden we will let all of these outsiders come in and do away with the longshoremen—'all we are concerned with is to protect the consignees rights. If he ships on my line I will protect him'. We should be together on this. Containers are taking away jobs—it will hurt the stevedoring business in the long run. They won't get anything by taking the box off. Where the life of this business is going to lie is with the stuffing and stripping of these boxes. When we set the rules, we did say that a company located in the area and, as an example used Lipton Tea who has his own plant and has his tea shipped in—the ILA has no right to force his

box open and take the tea out. Anheuser-Busch is getting ready to come into the area and if he had his own pier he could unload at it and all we get is a royalty. All of these other things—someone told these other people 'I want you to receive my cargo' but he has no right to receive the cargo. Southgate is getting in on the business—he takes a few and then somebody else take a few. Next thing, Overnite will be building a big warehouse. Somebody will say we get away with D. D. Jones and we will apply for Sears Roebuck—there has to be a stopping point somewhere."

Mr. Ritter said "you are exactly right—I am not contesting it nor anyone else here will argue with you. We know what the contract says, we know what the rules say—this is something I don't know how you can regulate, but we will try to work this out. What we are telling you is that we don't follow the boxes after they get here—we don't know where they go." Mr. Billups asked if what Mr. Ritter was saying was that once a container got off the ship, he did not know where it was going. Mr. Rabeau said when he shipped a container it went out of his hands to Chicago or wherever—it was out of his jurisdiction. He said the man in Chicago knew where it was going but he did not—American Export knew but he did not.

Mr. Rabeau said "these five containers you have me for making fictitious documents show door-to-door for Norfolk delivery—what am I to do with them—tell the man he has to strip them at the pier. They are loaded in Europe and the bill of lading is marked door-to-door."

Mr. Brown said "we know that both of us here are parties to the container contract—there are a lot of advantages to shipping the cargo in the containers—it saves in any number of different ways. It is simple to me that the shipper be made aware of the contract that has been made between the ILA and the shipping companies and that will cause them not to circumvent the contract. J. C. Penney who hires D. D. Jones and maybe uses his own men is in violation of the contract that we have together." It was stated that J. C. Penney was not a distributor but D. D. Jones was.

Mr. Brown stated "you are saying you have signed a contract with the ILA but you have not taken time to involve the shipper. In order for the men to use the advantages of the containers 'he must qualify'. There is no need for us to fight about something that we can can be done."

Mr. Pentecost said "you have to define a consolidator and a man who rents warehouse space. If J. C. Penney rents space and brings a container in on an official document and it is going into his warehouse space, I don't think we have anything to do with it." Mr. Brown asked "what do we have to get a definition of a stripper or of a consolidator." Mr. Pentecost said "no one gives out with more dialogue than you, Brown."

Mr. Rabeau asked "do you tell me I have to refuse this man's cargo because it should be door-to-pier. It was not one box changed from pier-to-door." Mr. Billups said "All of those that you say we said were changed from pier-to-pier to house-to-house."

Mr. Kelsey said "you have a container listed door-to-door on your document although it is not, don't you agree that the ILA has to strip that box. The contract says that all containers have to be stripped unless they go to the beneficial owner."

Mr. Rabeau replied "Genesco imports the cargo, I don't know who is at Poindexter Street—how am I supposed to know." Mr. Kelsey said "you have to know who the beneficial owner is." Mr. Billups stated "you know Genesco has no plant in this area. If a man wants to take advantage of the container cargo then he must live up to the contract between labor and maangement."

Mr. Pentecost then pointed out "this has to do with LTL shipments or consolidated shipments. Now, if a man has a container full of cargo and it is stuffed by the ILA and it is not LTL then we have not violated anything. You all come in here with the approach that every steamship man is trying to 'jenniwink' you out of something."

Mr. Billups said you are not going to take anything from us—anything that was put in the contract. The warehouse that the box in question is going to (at D. D.

Jones) does not represent the beneficial owner therefore the box should have been stripped at the pier. We cannot sent it. This is a trucking company. We have a contract that this box must be stripped at the pier and then this man can come and pick up the box and carry it to the warehouse—the man who is receiving this."

Mr. Merritt then stated "here is a list of containers that were marked pier-to-pier and were switched house-to-house."

Mr. Pentecost stated that when a consignee asked that something be changed from house to house to pier-to-pier, he loses something. Mr. Merritt said he saw Southgate take 200 bags out of a 40 foot container and put it in a B&O truck. Mr. Pentecost asked how it moved. He was told they were the bags that were in the box that Mr. Alston reported in his letter—it was marked as a pier-to-pier movement.

Mr. Billups said "here is what I am saying you are doing to us. You are playing with us like a bunch of children because we want the work. You give us good arguments. We are serious about this particular situation and there is some corrective medicine for it. We cannot sit idly by and watch every guy who wants to ship a piece of cargo through this port in containers, every broker, consolidator, freight forwarder, or whoever else is involved, to come in here with his cargo and just destroy everything we have here because he decides in Italy or Australia or Japan that he is going to write on a document house-to-house. Where is it going—it is going to certain and certain address—I want to move it. You are telling me that no one can question this individual whether or not he owns the cargo in that container, or that it is his plant where the cargo is sent. They can't ask him that. They can't tell him if 'that is not your own plant—if house-to-house you can get whatever company you want to come and take it to wherever you want it, but in accordance with the contract we have with the ILA you must be the beneficial owner of the cargo and it must be delivered to your house.' "

Mr. Pentecost said he thought they would have to find out what the contract was between J. C. Penny and D. D. Jones. Mr. Billups said they had talked with the union men who worked over there.

Mr. Rabeau stated if J. C. Penney was renting the D. D. Jones warehouse that was his house. Mr. Kelsey said that they could not come down and take the cargo off the ship—that was the jurisdiction of the longshoremen. Mr. Merritt asked if it would not be simpler to unload it at the pier. Mr. Rabeau replied "as long as the box comes in house-to-house I am not stripping it at the pier. As long as it is door-to-door I am not going to break the contract. You can take me to court because the shipper can take me to court for breaking the seal on the container. Under the terms of the bill of lading I cannot go into it." Again Mr. Kelsey stated if it did not go to the beneficial owner, the ILA had jurisdiction over it.

Mr. Billups asked how they did it in New York "when the people ship cargo and the boxes that come in by Sealand and any of those shippers or any of those buyers who do not qualify under the contract for door-to-door or house-to-house—those boxes are held until stripped or until the buyer decides what he wants to do with it. When he says he wants it delivered down to that storage warehouse because he has leased 500 feet up there, he does not own it but leases the space and he does not qualify. Then it would have to be stripped at the pier and then he could carry it up there and store it. Whatever they write on the documents you won't question it and you could care less. If a guy leases in accordance with the contract he has, and he tells you house-to-house in care of Southgate Terminal, all you do is say house-to-house and let her go. Now you know good and well he does not qualify for house-to-house." Mr. Rabeau said "he has the signed release. I am not stripping until the man changes the documents."

Mr. Billups stated "when a man rents a house he owns it because he rents it. He has certain rules to live by." Mr. Rabeau replied "it does not mean anyone else can walk in there." Mr. Kelsey said what the union wanted was the ocean manifest. Mr. Rabeau replied "you will never get it." "We will go to the Customhouse and get it", Mr. Kelsey replied. Mr. Rabeau again stated that

the shipping companies would not turn over an ocean manifest.

Mr. Merritt displayed what he said was an ocean manifest, however Mr. Rabeau told him that was not a manifest but was a copy of an order sheet. When the containers leave the ship they go into the custody of the terminal company and the steamship company had no right to say how they were forwarded. The freight forwarder represents the consignee and he sent the order as to where the box was to go. The consignee was usually the beneficial owner. He said they did not know who was going to buy the J. C. Penney cargo because J. C. Penney stuffed the boxes at point of origin He said they were not trying to build up the consolidators in the port—they did not care about those people. Mr. Billups said "you act like you love them, all you are offering is token excuses. You know what the contract says. Everybody is here trying to protect the people who are consolidators."

Mr. Merritt asked if Mr. Pentecost knew of 4 or 5 containers that were taken to a local warehouse and stripped. Mr. Pentecost said his attorney had talked with Mr. Thornton of Southgate and Mr. Thornton said that they were agents for some outfit in the Midwest. "This full container load was not consolidated with other shipments. It had one commodity and you tell me it was loaded into a B&O trailer. If that was loaded in a B&O trailer that throws a different light on it." Mr. Merritt said they received five in on highway express and then they started putting it in another truck. Mr. Pentecost replied that was simply transferring from one truck to another. It was not being consolidated it was being distributed. Mr. Billups asked if he had the right under the contract. Mr. Hall stated that "the employers keep talking about going into court and they will beat up—what do you think Mr. Kelsey?" Mr. Pentecost said "we have to resolve it here."

Mr. Brown remarked that the contract "says any box that there is a dispute on we have the right to not work it until we get an answer on it."

Mr. Kelsey stated "the ILA should know what each box contains and how it is destined to be handled before

it leaves the ship's hold. While it is on the ship you have something to do with it. What I am recommending to resolve this dispute is that the information be furnished the ILA inspector on the discription and how each box is to be handled before that box is touched by a longshoreman."

Mr. Rabeau said "we can't do it. The papers do not always get here before the ship." Mr. Kelsey then said "what you are telling these ILA men is that 'you will have to discharge these boxes whether you strip them or not'. The contract provides that there will be certain boxes which shall be stripped at the pier unless the ILA knows where they are going." Mr. Rabeau said that they gave the ILA the disposition list. Mr. Ritter stated "Your suggestion won't work. There are some things that can't be done. We don't want this to get out of hand. We are not trying to protect a consolidator—this is a situation that you cannot put your finger on. We cannot just give you the destination. We might be working through the Customs Broker and we will make it known that these things have to be done but I don't know whether we can control it through the brokers." Mr. Kelsey asked "Does the ocean manifest have to be sent to the Customs?"

Mr. Ritter replied "No. They say they are getting consignments on general bills of lading but it has not been paid for and maybe the man who ordered it makes out a negotiable instrument and if this man wants to pay for the goods then he picks up the bill of lading and goes to the steamship company to get the goods. Sometimes it is consigned to the bank. Here is what I am saying—by going through the Customs freight forwarders on this, it might be a way we can approach it. It is impossible for us to control it because we don't know where a consignee might come in even though we know where they start out for." Mr. Kelsey stated "you signed a contract and all boxes are going to be stripped that are not going to the beneficial owner." Mr. Ritter said they had told them at that time it would be impossible to control them.

Mr. Pentecost stated that the commodity that Mr. Merritt was talking about went to the beneficial owner. "I don't know maybe the I.L.A. should have stripped the box, that is why I had the attorney call up Mr. Thornton."

Mr. Ritter stated "there are ways that this can be worked. I have talked with D. D. Jones and that is a situation where they lease this warehouse and nobody else puts their stuff down there. The thing was set up for Penney's to have their own people here."

Mr. Pentecost said "Sealand has its own terminal in New York—no steamship line has any terminal at Hampton Roads, we act as intermediaries. It goes over to the terminals and we have to pay them $12.00 per unit—it goes into the custody of the terminal and they are responsible for it. The Freight Forwarder makes up a typewritten order on Norfolk International Terminal and they tell them that the goods are to be turned over to what truck or rail line."

Mr. Billups said "When Sea Land containers are not going direct to the beneficial owner, they are ordering them stripped on the terminal." Mr. Rabeau stated "they are not stripping until they get the permission from the consignee to strip. I have some being held up for stripping." Mr. Billups said unless the shipper was going to receive the consignment at their own house, he had to strip it at the pier.

Mr. Pentecost asked "do we want to go back and tell J. C. Penney that on the containers that we contract house-to-house that his goods cannot move in that container over to the warehouse space that he has leased."

Mr. Merritt said "the boxes leave the Far East and somewhere they are changed from pier-to-pier to house-to-house. It is clear on the document that it is to be pier-to-pier." Mr. Rabeau then presented a copy of a document and asked what was wrong with that, and asked who changed the types of box. Mr. Pentecost stated that the terminal changes it—Norfolk Terminal. Referring to Mr. Rabeau's document he said that it was an order sheet and it said Norton & Ellis. He said J. C. Penney owned the cargo and Norton & Ellis acted as their freight

forwarders. The terminal had to do as the freight forwarder said.

Mr. Rabeau stated that the change was either done by the shipper or the consignee. Mr. Merritt replied that they did not have a contract with the consignee. They were in a 50 mile radius.

Mr. Billups said that they had gotten the matter settled. "Mr. Pentecost is going to write to J. C. Penney and tell them that they will use I.L.A. labor unless they are using their own warehouse."

Mr. Pentecost said "if a document comes in and J. P. Penney is the beneficial owner, the I.L.A. will not let that box go to its leased warehouse which is owned by D. D. Jones." Mr. Billups replied "D. D. Jones owns the warehouse and does not qualify as a house-to-house movement on the present set up. The Union's representative told me that they have three or four warehouses over there." Mr. Rabeau said the HRMA would put out a letter. Mr. Merritt stated that the I.L.A. would hold the boxes that were in question until they got something straight.

Mr. Pentecost stated that they would tell D. D. Jones that they will not strip J. C. Penney boxes—"we will tell J. C. Penney that the I.L.A. will strip the boxes."

"The contract says," Mr. Pentecost stated, "if the carriers make a fraudulent document or evades the contract. We are legally on sound ground as far as the documents are concerned."

Mr. Boroody said, "I would like to ask that the employers' committee caucus for a few minutes. I think from a practical standpoint the I.L.A. knows that many changes take place after the boxes come out of the ship." Mr. Rabeau stated "In lieu of a manifest, I will give you where the boxes are going but I do not know this prior to discharge. I will give you what I can physically do."

At this time the employers caucused. Upon the return to the meeting, Mr. Pentecost stated "Mr. Mace is going to put out a letter to the Freight Forwarders and all the Steamship Agents and Terminal Operators because of the fact that after the box leaves the ship it goes into the hands of the terminal and forwarding people. The

freight forwarder is representing the shipper and he will notify them that 'any containers which are carrying cargo which is not cargo of the beneficial owner and which is not moving to the owners' warehouse, must be stripped at the pier.' We will notify J. C. Penney that the warehouse space he has at D. D. Jones is not good in respect to this contract even though we think it is, and any containers that are coming in or are already here, the I.L.A. is going to force the carrier to strip them even though they are moving on a house-to-house document."

Mr. Merritt said "say the I.L.A. and the Steamship Company will strip them." Mr. Pentecost replied that the HRMA was going to notify the agents, etc. Mr. Kelsey asked that a copy of the notice be sent to Mr. Alston and also to Mr. Billups.

Mr. Adams then stated that it would be the I.L.A. used to strip the containers, and Mr. Pentecost said that they (the employers) were not in collusion with any consolidator. Mr. Billups remarked "we said you were closing your eyes to what was happening to us." Mr. Pentecost said because of the action of the I.L.A. the container business might do down. Mr. Billups replied that "the same contract exists in every port—the same thing that they are facing here will face them in another port."

Mr. Brown then stated that the union would like to have a copy of the minutes of each one of the meetings to refer to so that the employers would not spring anything on them when they came in the meetings.

Mr. Pentecost said "we just read the minutes because we did not like the allegations made in that letter. We are not going to give you extra copies of manifests. You will get a copy of the minutes." Mr. Brown stated "whenever they are drawn, give us a copy of the minutes. I think it will work itself out to the best of everyone's concern."

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Mr. Kelsey stated "as of now the I.L.A. container man, Mr. Merritt, had to go around in his automobile trying to run down the containers. He will have to have official documents since the I.L.A. has the contract that says what containers are to be stripped—some official information from the shipping company. He has to ask somebody—where are we going to get this information." Mr. Pentecost replied that he would get it from the terminal company. Mr. Pentecost referred to the document that Mr. Merritt had and said that it was a cargo sheet between the shipper and the terminal, and Mr. Merritt could have a copy of it. It was an official document that was a record of the cargo. He said they would tell the terminal to give Mr. Merritt a copy of it. Mr. Rabeau stated that the changes would be hard to get because they were made every day, five days a week.

Mr. Kelsey said, let the shipping company in the foreign ports know that they can't determine whether these longshoremen are going to strip the box. Mr. Rabeau said that Mr. Merritt went to his office and picked up the import disposition sheet and one or two boxes might

be changed after that, but that would be all. Mr. Ritter stated that the Customs Brokers tell them to change the boxes. He said effective as of the date of the letter, they would not make any more house-to-house if it was not going to the beneficial owner. Mr. Rabeau said the checkers gave them the names of the boxes to be stripped. Mr. Kelsey stated that the boxes that were not stripped were what they were interested in. He said that Merritt had a right to do something that would tell them of the containers that were going to be stripped. Mr. Rabeau said he was not going to call up the I.L.A. every five minutes to give them changes.

Mr. Ritter stated "we say we are going to tell the freight forwarders and brokers that cargo moving to a destination inside of a radius of 50 miles, which is not going to the beneficial owner of the goods or their warehouse, must be stripped at the pier. If he goes and moves one and it goes somewhere else, we are not going to ask him to let us know."

Mr. Kelsey asked "in your letter—did you mention the fact that this is a contract between the I.L.A. and the steamship agents?" Mr. Pentecost said what they were doing was violating the contract by refusing to handle J. C. Penny containers at the warehouse. Mr. Kelsey said "we will handle J. C. Penny later."

* * * *

Exhibit 1.

UNITED STATES LINES

INITIAL LAND, WATER OR AIR CARRIER: "[illegible] JAFA"

VESSEL, TRUCK OR CAR NUMBER—REFERENCE:

FORWARDING AGENT - REFERENCES - FMC NO.

EXPORT DEC.

SHORT FORM THROUGH BILL OF LADING

NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER

SHIPPER: CASSIN AIR TRANSPORT LTD.,

PLACE OF ORIGIN (COMPLETE ADDRESS): SHANNON AIRPORT, CO. CLARE.

CONSIGNED TO: ORDER OF INTERMODAL FREIGHT FORWARDING, 300 MAIN ST., NORFOLK, VIRGINIA 23510, U.S.A.

DESTINATION OF GOODS (COMPLETE ADDRESS):

ADDRESS ARRIVAL NOTICE AT PORT OF DISCHARGE: GENERAL ELECTRIC CO., AUDIO PRODUCTS DEPT., 2800 NTH. 22nd ST., DECATUR, ILLINOIS, U.S.A.

ALSO NOTIFY:

VESSEL: "AMERICAN LARK" VOY. 24W

FLAG:

PIER:

PORT OF LOAD: DUBLIN

PORT OF DISCHARGE (Where goods are to be delivered to consignee or unicarrier): NORFOLK

FOR TRANSSHIPMENT TO (If goods are to be transshipped or forwarded at port of [illegible]):

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS INCLUDE CONTAINER NUMBER(S)	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	MEASUREMENT	GROSS WEIGHT IN POUNDS
USLU 2014385 INTERMODAL FREIGHT FORWARDING, 300 MAIN ST., NORFOLK, VIRGINIA 23510.	1	CONTAINER S.T.C. 88 CARTONS AMPLIFIERS.	400'	2940

BORSE TO BOSSE.

COPY (Not Negotiable)

SHIPPERS LOAD STOWAGE AND COUNT

FREIGHT CHARGES PAYABLE AT DUBLIN BY SHIPPERS

Exhibit 1.

UNITED STATES LINES

INITIAL LAND, WATER OR AIR CARRIER . . . . . VESSEL, TRUCK OR CAR NUMBER—REFER

"EARL JARL"

FORWARDING AGENT - REFERENCES - FMC NO.

EXPORT DEC

SHORT FORM THROUGH BILL OF LADING

NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER

SHIPPER
CAMGIN AIR TRANSPORT LTD.,

PLACE OF ORIGIN (COMPLETE ADDRESS)
SHANNON AIRPORT, CO. CLARE.

CONSIGNED TO: ORDER OF
INTERNODAL FREIGHT FORWARDING,
300 MAIN ST., NORFOLK, VIRGINIA 23510, U.S.A.

DESTINATION OF GOODS (COMPLETE ADDRESS)

ADDRESS ARRIVAL NOTICE AT PORT OF DISCHARGE
GENERAL ELECTRIC CO., AUDIO PRODUCTS
1200 E. 22nd ST.,
DECATUR, ILLINOIS, U.S.A.

ALSO NOTIFY
DEPT.,

VESSEL FLAG
"AMERICAN LARK" VOY. 248E

PIER

PORT OF LOADI
DUBLIN

PORT OF DISCHARGE (Where goods are to be delivered to consignee or notify)
NORFOLK

FOR TRANSHIPMENT . . . . . forwarded at port of

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS INCLUDE CONTAINER NUMBER(S)	NO OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	MEASUREMENT	GROSS WEIGH IN POUNDS
UESU 2005470 INTERNODAL FREIGHT FORWARDING, 300 MAIN ST., NORFOLK, VIRGINIA 23510, U.S.A.	1	CONTAINER S.T.C. 144 CARTONS AMPLIFIERS.	662'	5040

RECEIVED ARRIVAL NOTICE
AND
FREIGHT BILL
COPY
U. S. LINES, INC., 200 E. MAIN ST., NORFOLK, VA.
(Not Negotiable)

SHIPPED AND LOADED
STOWAGE
ARRIVED
PIER
AND COUNT
FREE TIME EXPIRES
FRT. COLLECT

FREIGHT CHARGES PAYABLE AT DUBLIN BY SHIPPER

442

RESPONDENT'S EXHIBIT No. 3

UNITED STATES LINES, INC.

EQUIPMENT INTERCHANGE AGREEMENT

THIS AGREEMENT made this 13th day of May, 1969 between UNITED STATES LINES, INC., a Delaware corporation, hereinafter referred to as "lessor", and EVERETT EXPRESS, INC., a Delaware corporation, hereinafter referred to as "lessee".

WITNESSETH:

WHEREAS, it is contemplated that the lessor will let and deliver to the lessee and the lessee will hire and accept from the lessor certain containers and/or chassis for transportation by the lessee over highway routes, and

WHEREAS, the parties desire to enter into an agreement concerning the use, operation and interchange of such containers and chassis;

NOW, THEREFORE, for and in consideration of the terms and conditions hereinafter set forth, it is mutually covenanted, stipulated and agreed by the parties as follows:

FIRST: The term "container" shall mean any closed container, van or box used by lessor for the carriage of goods, merchandise and cargo; and the term "chassis" shall mean any load-carrying vehicle without power.

SECOND: Lessor shall, from time to time, deliver to lessee containers which have been placed upon lessor's chassis or containers alone without chassis for transportation upon lessee's vehicle. Containers may or may not be loaded with cargo at time of interchange or delivery between the parties. Containers or chassis shall be interchanged or delivered for transportation at lessor's terminals or at such other point or points as may be mutually agreed upon between the parties from time to time.

THIRD: At the time of interchange authorized representatives of the lessor and lessee shall make an inspection of each container and/or chassis and shall jointly execute

an "Equipment Interchange Receipt and Inspection Report", a blank copy of which is appended hereto as Exhibit "A". The condition of such container and/or chassis, and any damages, defects or exceptions noted at the time such inspection is made, shall be noted on the said Equipment Interchange Receipt and Inspection Report. Each container and/or chassis shall again be carefully inspected by authorized representatives of lessor and lessee upon return and redelivery of such container and/or chasssis by lessee to lessor and the condition thereof and any damages, defects or exceptions noted at the time of such return and redelivery, shall also be noted upon the original Equipment Interchange Receipt and Inspection Report. Any changes in condition, and any additional damages, defects or exceptions noted at such latter inspection shall also be noted upon a "Equipment Damage Report", to be jointly executed by authorized representatives of the lessor and lessee, a blank copy of which is appended hereto as Exhibit "B". For the purpose of determining whether a particular container or chassis has in fact been damaged between the time of delivery to lessee, the parties to this agreement shall be bound by the aforesaid Equipment Interchange Receipt and Inspection Report and Equipment Damage Report, and subject to the provisions hereof, lessee agrees to assume full responsibility for such damages, defects or changes of condition and shall, within fifteen (15) days after date of billing, reimburse lessor for the cost of restoring the container or chassis to its original condition, ordinary wear and tear excepted. The person (including tractor driver) receiving or delivering any container or chassis is deemed to be an authorized representative of lessee.

FOURTH: The lessee shall:

(a) complete promptly and expeditiously the use for which the containers or chassis has been furnished to it and return the container or chassis to the terminal of the lessor from which it was received or to such other point as may be shown on the Equipment Interchange Receipt and Inspection Report or otherwise mutually agreed in writing;

(b) not permit any container or chassis to leave its custody and possession without permission of the lessor in writing, and then only to the extent of such written permission;

(c) comply with any and all appropriate formalities and requirements regarding the use, operation or transportation of the containers or chassis;

(d) be responsible to the lessor for the performance of this agreement by itself and by all other persons into whose possession any such container or chassis may go until its proper return to the lessor;

(e) have complete control and supervision of such containers or chassis while in its custody and possession, and shall control the detail of the work of any employee or agent operating or using said containers or chassis during such time any person operating, transporting, in possession of, or using any such container or chassis after the signing of said Equipment Interchange Receipt and Inspection Report and until such form is again signed upon return of the container or chassis to the lessor is not the agent or employee of the lessor for any purpose whatsoever; and

(f) hold the lessor harmless and reimburse the lessor for any loss of or damage to any container or chassis and hold harmless and indemnify the lessor from any and all liability for bodily injuries, death, loss, damage and expense to persons or property arising out of the use, operation, maintenance or possession by the lessee of any such container or chassis or cargo or properties carried therein during the entire period the container or chassis is not in the actual custody and possession of the lessor and shall hold harmless and indemnify the lessor from any and all responsibility and liability arising out of damage to or loss of cargo or property carried in any such container or chassis while said container or chassis is not in the actual custody and possession of the lessor.

FIFTH: It is further agreed that:

(a) The lessor shall equip each chassis delivered to lessee with tires and if tubeless tires are not furnished, with tubes, of proper size and which are in such condition

as will permit the safe operation of the chassis. Thereafter, ,until such time as the chassis is returned to the lessor repairs to the tires and tubes shall be made by and at the sole expense of the lessee. In the event of a blowout or a total failure of a tire or tube, lessee shall furnish replacement tires and tubes to permit the return of the chassis to the lessor, but shall retain such replacement tires and tubes upon redelivery of the chassis to the lessor. The blown out or unserviceable tire and tube shall be returned to the lessor with the chassis. In the event that the lessee shall fail to return the blown out or unserviceable tire or tube, the lessee shall pay to the lessor the value of each such tire or tube at the time of original interchange. In the absence of specific information to the contrary, it is agreed that the value of each tire at the time of original interchange is $90.00 U.S., and that the the value of each tube is $10.00 U.S.

(b) In the event of mechanical failure or other failure due to defective equipment on a chassis, the lessee shall make such repairs as may be necessary; provided, however, the the lessee shall secure the approval of the lessor before making any repairs, the estimated cost of which will exceed $100.00 U.S. When the cost of such repairs as may be necessitated by mechanical failure or defective equipment is less than $25.00 U.S., the lessee shall make such repairs at its own expense. Where the cost of such repairs exceeds the sum of $25.00 U.S., the lessor shall be responsible, and shall promptly reimburse the lessee upon receipt of a bill reflecting such a payment. The aforesaid bill shall indicate in detail the nature of the repair and shall state separately the sum expended for labor and parts.

(c) Lessor shall equip each chassis delivered to lessee with such vehicle license plates and/or registration certificates as appropriate government laws or regulations may require it as a chassis owner to furnish and, in addition, each chassis shall be equipped with satisfactory mud flaps, working directional signal lights, clearance markers, reflectors and such other equipment as is necessary to comply to the extent required, with pertinent government safety regulations.

(d) The lessor does not make an warranty or representation, either express or implied, as to the fitness or condition of any chassis or container or the contents thereof.

(e) At the time of interchange of a loaded container under heat or refrigeration the mechanical units shall have sufficient oil and fuel to insure forty-eight (48) hours continuous operation.

(f) Fuel and oil used in providing refrigeration or heat shall be replaced by the lessee at the time a mechanically refrigerated or heated container is returned or interchanged by lessee. If lessee fails to replenish the fuel and oil supply of the refrigerated or heated container lessee shall, unless otherwise agreed upon between the parties involved be liable for and shall pay the cost of the fuel and oil consumed.

(g) When a refrigerated or heated container that has moved unpacked perishable commodities under refrigeration or heat is unloaded by lessee, is shall, unless otherwise agreed upon between the parties involved, be steam cleaned by lessee.

(h) Lessee shall be responsible for the full maintenance and repair of the diesel electric generator sets, nose mount temperature control unit including temperature recorder and thermostat, furnished in connection with containers leased hereunder. In the event a repair is necessitated by a defective part, lessor shall reimburse lessee for the reasonable cost of said part upon delivery of the defective part by lessee to lessor, provided, however, that the cost of all labor and materials other than the reimbursable cost for the defective part shall be borne by the lessee.

SIXTH: The lessor and lessee agree that the interchange of each container and chassis shall be compensated for in accordance with the Table of Charges and Schedule attached hereto and made a part hereof. Except as otherwise provided, the terms of this agreement shall become operative with respect to the lease of the particular container and/or chassis upon the execution by the lessee of said "Equipment Interchange" Receipt and Inspection Report." Settlement shall be made by the lessee within ten (10) days following the date of lessor's invoice. Daily charges shall continue to accrue, notwithstanding the fact

that a container or chassis has been withdrawn from service for repairs, except in those cases in which the nature of the repair is such that the lessor is required under the terms of this agreement to bear the cost thereof. In the event of the loss of, theft of, total destruction of, or irreparable damage to a container or chassis, the daily charges shall cease as of the date of such loss, theft, destruction, or irreparable damage.

SEVENTH: The lessee agrees to keep the container and chassis free of any and all liens and encumbrances.

EIGHTH: The lessee agrees at its sole cost and expense to keep and maintain said containers and chasis in good repair and operating condition and return the containers and chassis to lessor in the same good order and condition as when received, ordinary wear and tear excepted. In the event of damage to a container or chassis for which the lessee is responsible under the terms of this agreement, the lessee shall, at its expense, restore the damaged container or chassis to a condition consistent with that condition that prevailed at the time of original interchange from lessor to lessee. In the event that the lessee shall fail to make such repairs, it shall nevertheless be responsible for the cost of such repairs and for the continued payment of daily charges until the repairs are completed even though the container or chassis may have been returned to lessor with the understanding that lessor will make the repairs.

In the event a container or chassis is lost, stolen, totally destroyed, or irreparably damaged between the time of its interchange and delivery to lessee and its return to lessor, the lessee agrees to reimburse the lessor an amount equal to the depreciated book value of said container or chassis on the date of said loss, theft, destruction, or irreparable damage, but not less than the fair market value of said container or chassis on said date.

NINTH: This instrument and the attached Table of Charges and Schedule, the Equipment Interchange Receipt and Inspection Report and the Equipment Damage Report shall constitute and contain the entire agreement

between the parties and no agreements, representations or understandings not specifically contained herein shall be binding except as contained herein or reduced to writing and made amendatory hereof.

TENTH: Either party to this agreement may terminate the same at any time by giving the other party ten (10) days' written notice of such termination by registered or certified United States mail, provided, however, shall remain in effect until after all containers and chassis leased hereunder have been properly delivered to and accepted by lessor.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

WITNESSES AS TO LESSOR:	UNITED STATES LINES, INC. as Lessor
_____	By: /s/ Robert G. Partos ROBERT G. PARTOS Manager, Interline
_____	Attest:
WITNESSES AS TO LESSEE:	EVERETT EXPRESS, INC. as Lessee
/s/ [Illegible]	By: /s/ J. H. Everett J. H. EVERETT President
/s/ [Illegible]	Attest: /s/ [Illegible]

TABLE OF CHARGES AND SCHEDULE OF RATES

Lessee agrees to pay lessor rental charges as set forth below for all equipment interchanged pursuant to United States Lines Inc.'s Equipment Interchange Agreement. Said rental charges shall accrue on a per diem basis for each period of 24 hours or fraction thereof, Saturdays, Sundays and legal holidays excepted, commencing with the second 7 a.m. after date of receipt of equipment by lessee. The per diem charges shall be as follows for the equipment indicated:

EQUIPMENT	PER DIEM CHARGE
Item 1 20 Foot Single Axle Chassis with 20 Foot Container	$ 2.50
Item 2 20 Foot Tandem Axle Chassis with 20 Foot Container	$ 3.50
Item 3 40 Foot Tandem Axle Chassis with 40 Foot Container	$ 5.00
Item 4 40 Foot Tandem Axle Chassis equipped with demountable diesel driven electric generator unit, 75 gallon fuel tank, and 40 Foot Container	$15.00

It is understood and agreed between the parties that lessee shall pay lessor the above per diem charges in accordance with paragraph 6 of the Equipment Interchange Agreement and that such charges shall be assessed for each day, Saturdays, Sundays, and legal holidays excepted, that the container and chassis remains in the possession of lessee. Should a container and chassis be retained by lessee for a period in excess of 10 consecutive calendar days, Saturdays, Sundays and legal holidays included, the per diem charge applicable to the 11th and 12th day shall be double the amount stated herein and a charge of 3 times the normal per diem charge stated herein shall apply for every day in excess of the 12th consecutive calendar day; provided, however, that the penalty charges as stated above shall not apply on Saturdays, Sundays and legal holidays.

UNITED STATES LINES, INC. Nº 42301

ORIGINAL EQUIPMENT INTERCHANGE RECEIPT AND INSPECTION REPORT

VESSEL	CONTAINER NO.	CHASSIS NO.	BOGIE	TMT NO. (INTL. LIC. NO.)

TO CARRIER

(THIS PORTION OF REPORT IS TO BE COMPLETED AT TIME OF INTERCHANGE)

CARRIER RECEIVING CONTAINER AND OR CHASSIS

TRACTOR NO.	LICENSE NO.	SEAL NO.

BOX (Circle One)	GROSS WEIGHT
LOADED EMPTY	

CONDITION OF CONTAINER AND CHASSIS

(REGULATIONS REQUIRE THAT EACH PART LISTED BE INSPECTED. IF NO EXCEPTIONS, USE CHECK (√) MARK)

BRAKES

LANDING GEAR

WHEEL LUGS

LIGHTS

UNDERCARRIAGE

DOORS

FLAPS

TIRES	POSITION	BRAND NO. & CONDITION	POSITION
	RO		LO
	RI		LI
	RO		IO
	RI		LI

INSPECTED BY

DATE AND TIME

LESSEE'S REPRESENTATIVES SIGNATURE (Driver, Etc.)
RECEIVED IN GOOD CONDITION, EXCEPT AS NOTED.

FROM CARRIER

(THIS PORTION OF REPORT IS TO BE COMPLETED UPON REDELIVERY)

CARRIER REDELIVERING CONTAINER AND OR CHASSIS

TRACTOR NO.	LICENSE NO.	SEAL NO.

BOX (Circle One)	GROSS WEIGHT
LOADED EMPTY	

CONDITION OF CONTAINER AND CHASSIS

(REGULATIONS REQUIRE THAT EACH PART LISTED BE INSPECTED. IF NO EXCEPTIONS, USE CHECK (√) MARK).

BRAKES

LANDING GEAR

WHEEL LUGS

LIGHTS

UNDERCARRIAGE

DOORS

FLAPS

TIRES	POSITION	BRAND NO. & CONDITION	POSITION
	RO		LO
	RI		LI
	RO		LO
	RI		LI

IS AN EQUIPMENT DAMAGE REPORT BEING SUBMITTED HEREWITH? CHECK ONE: ☐ YES ☐ NO
IF YES, STATE REPORT NO. _____

INSPECTED BY

DATE AND TIME

LESSEE'S REPRESENTATIVES SIGNATURE (Driver, Etc.)
DELIVERED IN GOOD CONDITION, EXCEPT AS NOTED.

ACCOUNTING CODE

SUBSIDIARY ACCOUNT 660 21

CARRIER CODE NUMBER _____

DATE OF BILLING

Total Period of Interchange:

Amount Due

... days @ $ ... per day ... $ .....

... days @ $ ... per day ... $ .....

... days @ $ ... per day ... $ .....

..... Pay This Sum

$ .....

EQUIPMENT CONTROL — (UPON RETURN)

451

RESPONDENT'S EXHIBIT No. 4

S.T.A. OF BALTO.-I.L.A. CONTAINER ROYALTY FUND
218 Chamber of Commerce Building
17 Commerce Street Baltimore, Md. 21202
[UNION LABEL]

Administrator
Richard P. Hughes, Jr

Field Representatives
Constantine (Butch) Green
William (Dewey) Parrish

September 25, 1974

S.T.A. of Baltimore, Inc.
32 South Street
Baltimore, Maryland 21202

Re: Case No. 14-74
Hapag Lloyd

Gentlemen:

The union has requested that the following case be placed on the agenda at the next container committee meeting. The facts as contended by the union are as follows.

On Sept. 24, 1974 (10:46 Am.) Cohey Trucking picked up container No. HLCU 4621677 for delivery to Chicago Metallic Corp., Chicago, Ill. Said container was stripped and returned empty to the pier at 2:29 Pm. the same day (Sept. 24, 1974).

The union contends that this is a violation of the container agreement, and is therefore seeking liquidated damages of $1,000.000.

Respectfully Submitted,

/s/ Constantine Green
CONSTANTINE GREEN

/s/ William D. Parrish
WILLIAM D. PARRISH

cc: Kopp & Richardson
Walter Kwarta
Garris McFadden
John P. Roberts
S.T.A. of Balto. Inc.

S.T.A. OF BALTO.-I.L.A. CONTAINER
ROYALTY FUND
218 Chamber of Commerce Building
17 Commerce Street Baltimore, Md. 21202
[UNION LABEL]

Administrator
Richard P. Hughes, Jr.

Field Representatives
Constantine (Butch) Green
William (Dewey) Parrish

S.T.A. of Baltimore, Inc.
32 South Street
Baltimore, Maryland 21202

February 8, 1973

Re: Case No. 11-73
U.S. Lines
S/S American Lark

Gentlemen;

The union has requested that the following case be placed on the agenda at the next container committee meeting. The facts as contended by the union are as follows;

On February 7, 1973 containers CTIU 063999 & 265231 were observed being stripped at the Terminal of Roadway Express 250 S. Kresson St. Said containers were picked up from the pier on the same day observed, and consigned to Kanematsu-Gosho Manufacturing Co., Fayette, Ohio.

The union contends that this is a violation of the container agreement, and is therefore asking $1,000.00 fine for each container, a total of $2,000.00.

Respectfully Submitted,

/s/ Constantine Green
CONSTANTINE GREEN

/s/ William D. Parrish
WILLIAM D. PARRISH

cc: Haile & Kopp
Willis Schnowski
Hershey Richardson
John P. Roberts
S.T.A. of Balto. Inc.

June 26, 1975

Mr. Geoffrey Footner
Bay Agencies, Inc.
225 East Redwood Street
Baltimore, Maryland 21202

Dear Mr. Footner:

RE: Container Case 21-73—Dartline,
4/30/73, Container #BCLU 2411393.

The above-captained Container Case 21-73, brought about by the Union letter of May 1, 1973, was discussed at a meeting of the Joint Container Committee held on June 25, 1973, in the offices of the Steamship Trade Association.

A portion of the Union letter reads as follows:

"Container No. BCLU 2411393 was picked up at D.M.T. at approximately 3 P.M., April 30, 1973, by Branch Motor Express for delivery to Hoffman Mfg. Co., Celina, Ohio.

"Said container, however, was stripped at their terminal, and observed empty there May 1, 1973, at approximately 10:00 A.M."

This leter is to notify Bay Agencies, Inc., as agents for Dartline, that the case against the company was resolved in favor of the Union, and a fine of $1,000 is assessed since there was a violation of the container agreement. The company is hereby instructed to pay to the STA-ILA Container Royalty Fund, 218 Chamber of Commerce Building, Baltimore, Maryland, 21202, the sum of $1,000. representing the fine assessed against Container #BCLU 2411393, with the understanding that, as per contract language, "if the carrier does not pay the liquidated damages within 30 days . . . the I.L.A. shall have the right to stop working such carrier's containers until such damages are paid."

However, in accordance with our understanding, the Joint Container Committee has granted the right to appeal the case within fifteen days of the date of this letter; that is, by July 11, 1973. If no appeal is made, the fine will be due no later than August 10, 1973.

Please notify this office in writing when payment has been made.

Very truly yours,

STEAMSHIP TRADE ASSOCIATION
OF BALTIMORE, INC.
JAMES M. FORTUNE,
Managing Director

JMF/cc

cc: Mr. C. Green
Mr. W. Parrish

S.T.A. OF BALTO.-I.L.A. CONTAINER
ROYALTY FUND
218 Chamber of Commerce Building
17 Commerce Street Baltimore, Md. 21202
[UNION LABEL]

Administrator
Richard P. Hughes, Jr.

Field Representatives
Constantine (Butch) Green
William (Dewey) Parrish

S.T.A.I.L.A. Container
Royalty Fund
32 South Street
Baltimore, Maryland 21202

October 3, 1972

Re: Case No. 12-72
I.T.O. Corp.

Gentlemen,

The union has requested that the following case be placed on the agenda at the next container committee meeting. The facts as contended by the union are as follows:

On September 29, 1972 four containers were observed being stripped at the Trucking Terminal Of Boss Linco Lines, located at 3200 James Street.

Identifying numbers for containers in question are CTIU-060492, 066064, 267214 and 062354 discharged from the S/S Tohbei Maru at Dundalk Marine Terminal.

On Monday October 2, 1972 inquiry was made with official of Boss Linco Lines as to movement of said containers. It was stated by the official that the containers were destined for Montgomery Wards C/o H.P. Snyder Mfg. Co., Little Falls, New York. The contents of the four twenty foot containers were Consolidated into two forty five foot trailer trucks to be sent to its ultimate destination.

The union contends that this is a violation of the container agreement, and is therefore asking $1,000.00 fine for each container, a total of $4,000.00.

Respectfully Submitted,

/s/ Constantine Green
CONSTANTINE GREEN

/s/ William D. Parrish
WILLIAM D. PARRISH

CC: Haile & Kopp
Willis Schonowski
Hershey Richardson
John P. Roberts
Steamship Trade Assn.

S.T.A. OF BALTO.—I.L.A. CONTAINER ROYALTY FUND
218 Chamber of Commerce Building
17 Commerce Street Baltimore, Md. 21202
[UNION LABEL]

Administrator	Field Representatives
Richard P. Hughes, Jr.	Constantine (Butch) Green William (Dewey) Parrish

S.T.A. of Baltimore, Inc.
32 South Street
Baltimore, Maryland 21202

November 29, 1972

Re: Case # 20-72
Atlantica Line

Gentlemen:

The union has requested that the following case be placed on the agenda at the next container committee meeting. The facts as contended by the union are as follows:

On friday November 24, 1972 a visit was made to Pacific Intermountain Express (P.I.E.), to determine the movement of containers at their terminal. We observed two (2) empty twenty foot containers, CHRU 130-131-9, and HANU 220-488-9. Said containers were delivered to P.I.E.'s terminal in York Pa., and transferred to their break bulk trailer. However said containers were destined for house to house movement to International Harvester Co., Broadview Ill.

The union contends that this is a violation of the container agreement and is therefore asking $1,000.00 fine for each container, a total of $2,000.00.

Respectfully Submitted,

/s/ Constance Green
CONSTANCE GREEN

/s/ William D. Parrish
WILLIAM D. PARISH

cc: Haile & Kopp
Willis Schonowski
Hershey Richardson
John P. Roberts
S.T.A. of Balto. Inc.

STEAMSHIP TRADE ASSOCIATION OF BALTIMORE—INTERNATIONAL LONGSHOREMEN'S ASSOCIATION PENSION TRUST FUND
218 Chamber of Commerce Building
17 Commerce Street Baltimore, Md. 21202

CONTAINER OPERATIONS
REPRESENTATIVE
R. P. HUGHES, JR.

S.T.A. of Baltimore Inc.
101 E. Redwood St.
Baltimore Maryland 21202

May 22, 1970

Attn: Container Committee
Re: Case No. 4-70

Gentlemen:

Please place the following case on the agenda for the next meeting of the containing committee.

On April 28, 1970 the S.S. American Lancer Voy. 29 (U.S. Lines) discharged five (5) containers nos. USL 4510403, 4511550, 4511230, 4510738, and 4511605. The containers were consigned to Monsanto Chemical Co. of St. Louis Mo. but were stripped at Mason Dixon Trucking.

In accordance with Rule 3 par (e) of the container agreement the Union is asking $250.00 per container to be paid to the S.T.A.-I.L.A. WELFARE FUND.

Thank you,

/s/ Richard P. Hughes Jr.
RICHARD P. HUGHES JR.

cc: Willis Schonowski
Hershey Richardson
John Roberts

STEAMSHIP TRADE ASSOCIATION OF BALTIMORE—INTERNATIONAL LONGSHOREMEN'S ASSOCIATION PENSION TRUST FUND
218 Chamber of Commerce Building
17 Commerce Street Baltimore, Md. 21202

CONTAINER OPERATIONS
REPRESENTATIVE
R. P. HUGHES, JR.

S.T.A. of Baltimore Inc.
101 E. Redwood St.
Baltimore Maryland 21202

Gentlemen:

On Sept. 7, 1969 the S.S. Atlantic Span discharged one (1) container no. ACLU-260197. This container was stripped within the 50 mile radius of the port of Balto. Maryland and Vicinity without I.L.A. LABOR. Inaccordance with Rule 3 par. (e) of the container agreement the union is asking $250.00 to be paid to the S.T.A.-I.L.A. Pension and Welfare Funds.

Thank you,

/s/ Willis Schonowski
WILLIS SCHONOWSKI Committeeman

/s/ Hershey Richardson
HERSHEY RICHARDSON Committeeman

/s/ Richard P. Hughes Jr.
RICHARD P. HUGHES JR. Committeeman

December 19, 1969

Mr. Charles R. Butz
Ramsay, Scarlett & Co., Inc.
810 Keyser Building
Baltimore, Maryland 21202

RE: Container Case 8-69, S. S. ATLANTIC SPAN, Union letter rec'd. Sept. 24, 1969.

Dear Mr. Butz:

The joint Containerization Committee met in the offices of the Steamship Trade Association on December 18, 1969, and the above-captioned Container Case 8-69, brought about by the Union letter received September 24, 1969, was discussed. The Union letter of September 24, 1969, reads as follows:

> "On Sept. 7, 1969 the S.S. Atlantic Span discharged one (1) container no. ACLU-260197. This container was stripped within the 50 mile radius of the Port of Balto., Maryland and Vicinity without I.L.A. labor. In accordance with Rule 3 Par. (e) of the container agreement the Union is asking $250.00 to be paid to the S.T.A.-I.L.A. Pension and Welfare Funds."

This letter is to notify Ramsay, Searlett & Co., Inc., as Agents for Atlantic Container Line, that the case against A.C.L. was resolved in favor of the Union. This letter also serves as notification to A.C.L. of the decision, and the fact that they are hereby instructed to pay to the STA of Balto.-ILA Welfare Fund, 1853 Maryland National Bank Building, the sum of $250.00 to cover Container No. ACLU-260197, which was consigned to Chestertown, Maryland, but prior to delivery of the commodity, Preston Trucking Company discharged the commodity from the commercial container at their terminal at Ashland Avenue and placed the commodity in a larger container for reasons of their own.

The decision made in favor of the Union was based on language of the container rules, Par. 3(e).

Very truly yours,

STEAMSHIP TRADE ASSOCIATION
OF BALTIMORE, INC.

/s/ [Illegible]
[Illegible]

RESPONDENT'S EXHIBIT No. 12

NYSA-ILA EMPLOYMENT STATISTICS

Contract Year Ending	Total Employees	Total Adj. Hours Worked	Total GAI Exp.
09/30/51	48,791	46,406,563	
09/30/52	51,282	50,769,769	
09/30/53	49,293	46,143,573	
09/30/54	41,333	46,861,510	
09/30/55	34,639	46,285,244	
09/30/56	31,645	46,094,411	
09/30/57	34,146	50,766,890	
09/30/58	31,629	42,835,226	
09/30/59	30,428	44,695,693	
09/30/60	29,767	45,458,045	
09/30/61	27,999	41,006,979	
09/30/62	27,134	42,023,133	
09/30/63	28,224	49,820,328	
09/30/64	25,542	42,148,092	
09/30/65	25,033	49,677,237	33,755
09/30/66	24,825	43,935,626	1,717,757
09/30/67	24,599	40,722,166	1,675,974
09/30/68	23,565	42,553,729	3,070,219
09/30/69	22,531	47,021,617	5,986,030
09/30/70	19,962	32,853,146	24,340,472
09/30/71	17,568	31,019,123	29,023,868
09/30/72	16,741	31,352,558	33,493,141
09/30/73	14,967	24,435,284	43,819,045
09/30/74	14,417	24,665,089	41,563,439

JD-540-76
Baltimore, MD
Hampton, VA
Newport News, VA
New York, NY and
Norfolk, VA

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

5—CC—791, *et al.*

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

and

ASSOCIATED TRANSPORT, INC., ET AL.

ERRATA

Page iv, last line is corrected as follows:

> I have restored the caption in 5-CE-51 to its correct form.

Page 14, lines 1 and 2 are corrected to read:

> It was, at times, difficult to determine from these records whether the ILA's complaint in a particular case involved a shipper's load.

Page 20, lines 1 through 7 are corrected to read:

> In *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc. and Twin Express, Inc.)*, *supra*, the Board found that the ILA was attempting to obtain the work of stuffing and stripping less-than-container load cargo or less-than-trailer load cargo, which consolidators traditionally performed at their own off-pier facilities with their own employees, who were not in the unit represented by the ILA.

Page 21, lines 9 through 13 are corrected to read:

> The motor carriers have also traditionally hauled such containers to their own truck terminals and have stripped the shippers' loads from them and loaded the stripped cargo into their own trailers, using truck terminal employees, whenever considerations of state regulation, safety or economy persuaded a motor carrier to take that precaution.

Page 21, lines 34 through 37 are corrected to read:

> From the foregoing and the record as a whole, I find that the traditional on-pier work of longshoremen has not included the work performed by the employees of motor carriers, such as Associated and Houff, at their off-pier facilities.

Page 26, line 43 HRSa is corrected to read HRSA.

/s/ Leonard M. Wagman
LEONARD M. WAGMAN
Administrative Law Judge

Dated: Sep. 14, 1976

Baltimore, Md.
Hampton, Newport
News and Norfolk, Va.
New York, N. Y.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

5—CC—791, *et al.*

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, ET AL.

and

ASSOCIATED TRANSPORT, INC., ET AL.

ORDER CORRECTING DECISION AND ORDER

On August 12, 1977, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding.[1]

IT IS HEREBY ORDERED that said Decision and Order be, and it hereby is, corrected by deleting the citation "*Consolidated Express*, 537 F.2d 706 (1976)." from the ninth line on page 8 and substituting therefor "*Pittston Stevedoring Corp.* v. *Dellaventura*, 544 F.2d 35, 53 (C.A. 2, 1976)."

IT IS FURTHER ORDERED that the Decision and Order, as printed, shall appear as hereby corrected.

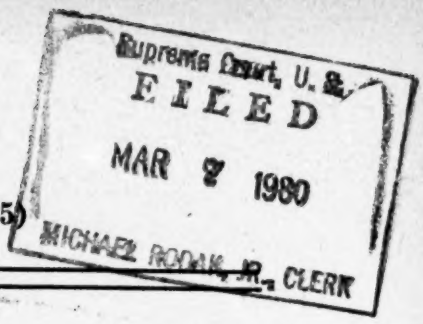
---

[1] 231 NLRB No. 64, Chairman Fanning dissenting.

Dated, Washington, D. C., October 20, 1977.

By direction of the Board:

GEORGE A. LEET
Associate Executive Secretary



APPENDIX

VOLUME III—(pp. 469-635)

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 10, 1980
CERTIORARI GRANTED JANUARY 21, 1980

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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(The decisions of the Board and the decision and judgment of the Court of Appeals were printed in the Board's petition for a writ of certiorari and thus need not be reprinted.)

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

2nd Region

Case Nos. 2-CC-1364
2-CE-75
2-CC-1365

IN THE MATTER OF:

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

26 Federal Plaza
New York, New York
July 11, 1977

Hearing in the above-entitled matter convened at 3:30 p.m. pursuant to notice.

BEFORE:

HENRY L. JALETTE, Administrative Law Judge

Appearances:

IRWIN M. PORTNOY, ESQ.
RANDALL N. HARAKAL, ESQ.
Counsel for the General Counsel
National Labor Relations Board
26 Federal Plaza, New York, New York

DONALD CARUSO, ESQ.
Of counsel, Lorenz, Finn, Giardino & Lambos, Esqs., Attorneys for Respondent N.Y. Shipping, 25 Broadway, New York, New York

JAMES F. MAHER, ESQ.
Of counsel, Zelby, Burstein, Bernstein & Hartman, Esqs., Attorneys for Puerto Rico Maritime Shipping Authority and Puerto Rico Maritime Management, Inc., One World Trade Center, New York, New York

THOMAS D. CONWAY, ESQ.
Of counsel, Brady, Tarpey & Hoey, P.C., Attorneys for Charging Parties, 84 William Street, New York, New York

HERZL S. EISENSTADT, ESQ.
Gleason, Laitman, Mathews, Magidson & Rosen, Esqs., Attorneys for Respondent International Longshoremen's Association, 17 Battery Place, New York, New York.

* * * *

[49] MR. CARUSO: I indicated before that I was in basic agreement with this stipulation and I would be willing to stipulate to all of Paragraphs 2, 3, 4 and 5 with the exception of Paragraph 4A and with respect to Paragraph 4A, I think the only limitation that has to be imposed on the statements contained in Paragraph 4A is that Trans-American Trailer Transport for which I will refer to hereinafter as TTT or Triple T ceased operations in the New York Puerto Rican trade on August 1, 1974 when its vessels were purchased by PRMSA.

JUDGE JALETTE: Will you accept that stipulation respecting Paragraphs 2 through 4C, I believe with 4A as modified by Mr. Caruso—I'm sorry, through 5C?

MR. PORTNOY: I will accept it with the exception, with one thing that we will—Mr. Caruso has admitted that the allegations in the later paragraph that TTT and MTM were fined by the contract board and I don't want, down the road, someone saying that I admitted that TTT was not fined by the contract board.

JUDGE JALETTE: I don't see how you could ever relate to the two items Mr. Portnoy.

MR. PORTNOY: Okay, fine.

JUDGE JALETTE: So, as I understand it, as between [50] counsel for the general counsel and Mr. Caruso, we have stipulated to Paragraphs 2 through 5C with a modification of Paragraph 4A indicating that TTT ceased the operation of vessels between New York and Puerto Rico on or about August 1, 1974 having sold its vessels to PRMSA?

MR. CARUSO: Yes, but it also goes to Paragraph 5D which beins on Page 3. I would be willing to stipulate through 5D.

JUDGE JALETTE: The stipulation is noted as regards general counsel and the New York Shipping Association.

What about you, Mr. Eisenstadt, is there any of that that you stipulate to?

MR. EISENSTDAT: Just one moment, your Honor, I think we can get some of that.

(Pause)

MR. EISENSTDAT: With the same qualification of Mr. Caruso, we have no particular disagreement with those stipulations.

JUDGE JALETTE: May I take it for the purposes of this proceeding you will stipulate to the same matters we have just described?

MR. EISENSTADT: I take it for granted that counsel for the general counsel has checked into the matters as far as place of business and so on and so on?

As far as the amount of revenue involved I think it's a question of common knowledge that these various [51] entities have earned quite a bit in excess of that over the period of time concerned.

JUDGE JALETTE: I will accept your remarks as a stipulation of Paragraphs 2 through 5D with the modification described by Mr. Caruso.

* * * *

[56] JUDGE JALETTE: With that understanding from respondent NYSA I will accept the stipulation to Paragraph 10.

What about Mr. Eisenstadt?

MR. EISENSTADT: These various documents except with respect to Exhibit—they are all various minutes or letters from the NYSA ILA contract board.

We do not find that they have—that they are inaccurate as far as their authenticity is concerned.

As far as their relevancy, et cetera, we take the same position, of course as Mr. Caruso.

JUDGE JALETTE: I gather that you would agree to stipulate them into evidence with the same reservations that Mr. Caruso expressed?

MR. EISENSTADT: Yes.

JUDGE JALETTE: With that understanding the stipulation is noted.

[57] Exhibits A through E are received into evidence as part of General Counsel Exhibit No. 3 for identification.

* * * *

[58] MR. CARUSO: I am willing to stipulate to Paragraph 11, 12, 13, 14, 15 with the same reservations that I noted with respect to Paragraph 10.

JUDGE JALETTE: As to all of them?

MR. CARUSO: As to Paragraph 11, 12, 13, 14 and 15 I will stipulate with the same reservations that I indicated when I agreed to Paragraph 10.

JUDGE JALETTE: As to the relevancy of the exhibit and your right to put in any rebuttal evidence or rebuttal testimony?

MR. CARUSO: Yes.

JUDGE JALETTE: With that modification, that is received.

MR. EISENSTADT: I find no difficulty with Exhibit F, G, Exhibit H, Exhibit I and with Exhibit J.

JUDGE JALETTE: That's the same as Mr. Caruso?

MR. EISENSTADT: Easily these documents are uncontroversial.

JUDGE JALETTE: I will accept that as the stipulation of the I.L.A.

* * * *

[123] RUSSELL MC HUGH

called as a witness, having been first duly sworn by the judge, was examined and testified as follows:

JUDGE JALETTE: Please give your name and address to the reporter.

THE WITNESS: My name is Russell McHugh. I am currently residing at Burnet Avenue, Syracuse, New York.

DIRECT EXAMINATION

* * * *

[124] Q Were you ever employed by Dolphin Forwarding, Inc.?

A Yes.

Q During what period were you employed by Dolphin Forwarding Inc.?

A From March 1973 until July 1977.

Q What was the title of your job?

A Operations manager.

Q In your capacity as operations manager, you have the knowledge of the company's operations?

A Yes.

Q What business is Dolphin engaged in?

A Dolphin is engaged in the transportation services on a nonvessel operating common carrier in the Puerto Rican trade.

Q Does Dolphin possess any authority to operate granted by an agency of the United States Government?

A Yes.

Q What agency, what authority does it operate under?

A Dolphin operates under a tariff on file with the Federal Maritime Commission.

* * * *

[125] The offices were located until July 1973, the general offices in Randolph, Massachusetts.

At that time we moved to Hanover, Massachusetts and we have remained there until I terminated my employment.

Q (By Mr. Portnoy) During 1973 and prior to September 1, 1974 how many employees were employed at the company's principal offices in Randolph, Massachusetts and then in Hanover, Massachusetts?

A Five.

Q Would you in a general way describe the function?

A General, administrative and clerical functions.

Q Any employees engaged in sales functions?

A Yes.

Q Would you tell us who engaged in the sales functions?

A Primarily the president, Richard Lee.

Q Does any carrier—do you know how work or your sales are generated?

Is that alone or with the assistance of any firm or carrier?

A No, the sales effort is conducted by Dolphin on its own behalf.

Q Does any carrier help you to generate business?

[126] A No.

Q Now, could you describe what happens in the movement of a container by Dolphin from the time that a sale is effected of the transportation services that are involved in that container?

Let's suppose that we have a manufacturer of shoes in Maine who wishes to ship them to the Puerto Rican trade, what does he do and what do you do?

A Well, upon becoming aware of Dolphin's loading facilities the manufacturer will choose his form of transportation to get the product to Dolphin for passage to Puerto Rico.

Dolphin will receive this freight at its facilities, load it into an ocean container and tender that fully loaded ocean container to the steampship lines for passage to Puerto Rico.

Q In 1973 and 1974 what facilities did Dolphin have for receiving containers and stuffing them?

A Dolphin maintained a terminal initially at Hasbrouck Heights and subsequently Carlstadt, New Jersey.

Q Would you tell us—did you operate—did Dolphin own those and operate those facilities in Hasbrouck Heights and Carlstadt itself?

A No.

Q Who if anyone was employed or would Dolphin have an [127] arrangement with to operate those facilities?

A Dolphin employed a warehouseman, Passaic terminal warehouse as agent to receive and load freight for Puerto Rico.

Q What did that warehouseman do specifically?

A He would receive in the name of Dolphin shipments for Puerto Rico, manifest them, load them into containers and dispatch them into the piers.

Q You were speaking of Passaic terminal warehouse?

A Yes.

Q I am going to refer to it as PTW. Did PTW have any employees who performed this work pursuant to the arrangement that we are talking about?

A Yes.

Q What kind of—what kind of labor did it employ? What did they do?

MR. CARUSO: I am going to object because I don't believe Mr. Portnoy has laid a foundation that this witness has personal knowledge of the operations of Passaic terminal.

JUDGE JALETTE: Objection sustained.

Q (By Mr. Portnoy) Did you ever visit any of those facilities yourself?

A Yes, sir.

Q Did you have an opportunity to observe the manner in [128] which containers were loaded pursuant to the arangement between PTW and Dolphin?

A Yes.

Q Now, would you be good enough to describe what PTW did and how it functioned in the loading of that container?

A Well, they would receive the freight from the motor carriers delivering it to that address.

Q Who did that? Who was involved in the receipt of that?

A The various employees that happened to be on the dock there at that time.

Q So that is it correct to say that they employed dock personnel?

A Yes.

Q What did those dock personnel do with the shoes after they took it in at the dock? What did they do with it?

A Generally it was set aside in a—I guess you would say a convenient location so that this freight could aggregate into a full container load with other shipments either on hand or to come in.

Once it reached into the proportion of a full container load, then these employees would then suff that container. [129] Q What happened to the container after it was stuffed?

A It would then be sealed. A dock receipt would be prepared along with a manifest, if necessary and it would be dispatched to the piers where it would be accepted and put aboard a ship.

Q To your knowledge were PTW employees employed by deep sea ILA labor?

A No.

JUDGE JALETTE: What was your question? Were they employed by deep sea ILA labor?

Q (By Mr. Portnoy) Did PTW employ personnel represented by ILA labor?

JUDGE JALETTE: That's not what you asked.

THE WITNESS: Still no.

Q (By Mr. Portnoy) We talked about containers. How would these containers arrive at PTW? What was the arrangement for obtaining these containers?

A We would secure a booking number from the steamship lines upon which a container could be released to a motor carrier or anyone else with an interchange agreement with that steamship line.

It would then be brought to our facility for loading.

Q Will you tell us how a booking number is secured and [130] what that means?

A A booking number is simply a reservation aboard ship for one or however many containers you are designated and it is secured simply by contacting the steamship line directly or one of their agents.

Q Now, prior to September 1, 1974 what ocean carriers were utilized by Dolphin in the movement of these containers?

A Seatrain Lines Inc. and Trans-American Trailer Transport.

Q Do you know where Seatrain Lines got these containers?

A Yes, they were owned by Seatrain.

Q How about Trans-American Trailer Transport who I will refer to from time to time as Triple T?

A They owned a few of the trailers that they furnished. A vast majority seem to come from the railroad trailer pools.

MR. CARUSO: I am wondering if we can get some idea of the number of containers moved.

The word majority to me is meaningless.

JUDGE JALETTE: Why don't you take that up on cross-examination? These are containers you are talking about, you say?

THE WITNESS: Yes.

JUDGE JALETTE: Seatrain owned its own TTT containers, [131] a majority were obtained from other sources you say?

THE WITNESS: Yes.

Q (By Mr. Portnoy) Now, to your knowledge were any of Dolphin's containers both prior to September 1, 1974 and after September 1, 1974 ever stuffed by labor represented by the Deep Sea ILA locals?

A One.

Q Would you—now, how many containers did you move on an average per week prior to September 1, 1974?

A Five to six on an average.

Q Five to six per week?

A Yes.

Q So, if I totaled five times 50 weeks, we are talking about 250 containers during the year, is that correct?

A That's right.

Q Now, you said that the ILA labor, Deep Sea Labor did stuff one container.

To your knowledge could you describe how that came to happen?

A To the best of my knowledge they preceded my involvement with Dolphin.

MR. CARUSO: I object on the grounds he doesn't have any personal knowledge of this incident.

JUDGE JALETTE: Sustained.

Q (By Mr. Portnoy) Now, after September 1, 1974 [132] did you have occasion or did Dolphin have occasion to utilize carriers other than Seatrain and Triple T in the Puerto Rican trade?

A Yes.

Q Would you tell us who those ocean carriers were?

A The carrier—it was on—I don't really know the full name. It was MTM.

MR. PORTNOY: Can we stipulate that MTM stands for Marine Transportation Management, Puerto Rican Inc.?

MR. CARUSO: So stipulated.

JUDGE JALETTE: Noted.

Q (By Mr. Portnoy) Anyone else?

A Puerto Rico Marine Management Inc. or PRMMI.

MR. PORTNOY: Can we enter into a similar stipulation?

MR. CARUSO: I will stipulate except to this extent it should be noted that the carrier involved is actually known as Puerto Rican Maritime Shipping Authority, that is the carrier that operates with a tariff on file with the Federal Maritime Commission.

The other two commissions referred to, MTM and PRMMI are operating companies that handle the operation of the vessels owned by PRMSA in the Puerto Rican trade.

JUDGE JALETTE: Does that conform to your understanding?

[133] MR. PORTNOY: Yes, I am perfectly willing to stipulate to that.

JUDGE JALETTE: All right.

Go ahead.

* * * *

Q Now, do you know Mr. Paul Semack?

A I have spoken with the man, yes.

Q Did you ever have occasion to speak to Mr. Semack concerning containers which were being stuffed by PTW or [134] Public or Park?

A Yes.

Q What was the date of that conversation?

A December 10, 1974.

Q Would you—how was that conversation carried out, was it in person or by telephone?

A By telephone.

Q Did he call you or did you call him?

A He called looking for Richard Lee who happened to be in Puerto Rico.

Q Now, tell us what he said to you and what you said to him.

A He said he had a list of containers that were recorded as being domiciled in Carlstadt.

Q Hold it for a moment.

What does domiciled mean?

A It means being physically located for loading.

Q Now, after he told you that he had a list of containers which were domiciled in Carlstadt, what did you say or what did he say to you?

A I told him I didn't think I was the person he wanted to speak to but I would be glad to take down the list of numbers and relay the information.

He gave me a list of approximately nine, maybe ten trailer numbers. Then he subsequently deleted one saying [135] it was a flat bed, it did not apply to Dolphin. He said that these containers were loaded by Dolphin within a 50 mile radius of the piers and that we were going to be fined under PRMSA's tariff provisions, $1,000 for each container and that additionally he would attempt to go back prior to October 1, 1974 and attempt to levy fines against Dolphin for loading within a 50 mile—within a 50 mile radius within the Port of New York.

Q Did he say anything else to your recollection?

A Yes. He said that our trailers were much too expensive for him to handle when he got fined $1,000 for each load.

He also said that he was refusing to issue us any trailers, he would not accept any more from us nor would he issue trailers to anyone else for our loading.

Q Anything else that you remember about that conversation?

A Yes. He said that we were attempting to deceive—I think he did say TTT or MTM in showing Hanover, Massachusetts as the origin of the shipment.

* * * *

[136] Q Did you ever call MTM or TTT again after that, after this conversation with Mr. Semack?

A Yes.

Q When was that?

A It was that afternoon. We had a trailer coninci-dentally, a Dolphin booking that was under load and was being brought in to MTM that very day. I attempted to get back to Semack and find out if that trailer would be accepted, if it would be refused, if it would be stripped and restuffed. What should we do with it?

[137] The driver was on the road some place. He wasn't there initially, but he did return the call and I —he really didn't want to address himself to the question.

Q Tell us what was said.

A Well, I finally put it to him.

I said, what are you going to do with that trailer and he said that, well, he would probably strip it and restuff it.

Q What in fact happened, if you know?

A Nothing. Nothing happened. It was accepted at the piers and sent to Puerto Rico routinely.

Q Now, after the second conversation with Mr. Semack did you ever attempt to—did you ever speak to anyone at MTM again or TTT in order to obtain trailers or containers?

A Yes on two or three occasions.

We received our booking numbers from an agent in the Boston area and I attempted to see if indeed we had been shut out and he said he had received a Telex instruction that no more booking members were to be issued to Dolphin nor would we receive any trailers that Dolphin had—any of TTT's trailers that Dolphin still had in his possession.

MR. EISENSTDAT: Who is "he" referring to?

[137a] THE WITNESS: This he, his name is Bud Oschman. He was employed by Northeast Agency.

Q (By Mr. Portnoy) Who is Northeast Agency?

[138] A To the best of my knowledge they are the regional sales agent for TTT, MTM.

Q Go ahead.

A Additionally I contacted Jerry O'Brien.

Q Who is he?

A The traffic manager for MTM and I asked him if indeed we could obtain bookings for loads that were not—that were or were not—could we get bookings at all from them and he said, no, the only bookings that Dolphin would be getting would be issued by Paul Semack.

Q What did you do after that, did you contact Mr. Semack?

A Well, no.

Semack had made it pretty plain it will be fruitless to obtain bookings.

* * * *

CROSS EXAMINATION

[140] Q You further mentioned the response to another question that Dolphin generated sales.

What do you mean by generating sales?

A A representative of Dolphin would visit the manufacturer or shipper's facilities, make known to that person or firm that Dolphin was available for transporting their goods to Puerto Rico and where our facilities for same were located.

Q How do you know this, were you physically present when these solicitations were made?

A On a few of them, yes.

* * * *

[144] Q And how was the approach made?

What was the approach of Dolphin to the potential customer?

What was it's pitch?

A That we were in the business of moving freight to Puerto Rico.

We felt we could provide a satisfactory service from the standing point of pricing and transit time.

Q Did you ever offer to show or did you show or did Mr. Lee in your presence show the potential customer how it would differ from what he was doing before then?

MR. PORTNOY: Objection.

[145] JUDGE JALETTE: Overruled.

THE WITNESS: On the few occasions that I was present I would have to say no.

Q (By Mr. Eisenstadt) Did you or Mr. Lee indicate to the potential customer or tell the potential customer that it could improve on the service he was already receiving elsewhere?

A Yes.

Q How?

A From the standpoint of pricing, and transit time.

Q What was the example?

A Our rates were lower.

Q Lower than what?

A Puerto Rican Forwarding.

Q What is that?

A And NVO.

Q On any of those occasions when you were present were any of those comparisons made with respect to let us say the service of an ocean carrier?

MR. PORTNOY: Objection.

JUDGE JALETTE: Overruled.

THE WITNESS: I don't think so.

Q (By Mr. Eisenstadt) Does that mean you are not certain or you just don't recall?

A I don't recall, but, I also don't think so.

* * * *

[146] Q (By Mr. Eisenstadt) Mr. McHugh, aside from solicitations by personal interview and by documents, were [147] there any other manners that you were aware of whereby Dolphin generated business?

A Well, I would think by telephone.

* * * *

[149] Q Now, when those goods arrived at for instance Passaic or Public's or Park's facilities, they would co-

mingle that, the goods with other goods before—and put it into a container, is that correct?

A Yes.

* * * *

[155] JUDGE JALETTE: You are saying there are some containers which are not on wheels and some trailers which are not on wheels?

You said some were detachable and some were not?

THE WITNESS: It depends on the mode of operation.

There is one type of operation where a crane lifts up a box which is the trailer less the wheels and stacks those one on top of another.

There is another mode where the whole unit wheels and all is physicaly rolled onto the ship.

[156] JUDGE JALETTE: Could you give different names?

THE WITNESS: Yes, one is lift-on lift-off which involves the denominal container bodies, the other is all on roll-off.

JUDGE JALETTE: They are both containers?

THE WITNESS: Yes.

JUDGE JALETTE: You want the deminsions?

Q (By Mr. Eisenstadt) These were metal boxes, right?

A Yes.

Q They are about anywhere from 20 to 40 foot in length?

A Yes.

Q Did they have any markings on them?

A Yes.

Q What were the markings?

A The markings could have shown as either Seatrain Lines, Transamerican Trailer Transport or any one of a number of railroad companies or trailer leasing companies.

Q The ones that were shipped by Seatrain and by TTT, what did they show?

A Seatrain in almost all cases were marked as STLU Seatrain Lines.

The TTT units were just any one of a number of things.

Q Did any of them bear Dolphin's name on them?
A No.
Q What about Passaic markings?
[157] A No.
Q What about Park markings?
A No.
Q What about Public markings?
A No.

* * * *

[160] Q Now, on the movement from the warehousemen from the agent, Passaic, Park or Public to the piers, how did they get there?
A By truck.
Q Who would arrange for the truck movement?
A Either Dolphin or it's agent.
Q By it's agent meaning who?
A Passaic, Public Warehouse Service Sales or Park Service.
Q What trucking firm, to you knowledge, delivered containers from Passaic down to the docks?
A Interocean Service Corporation I.).S.
Q Is that an affiliate with Dolphin?
A No.
Q Is that an affiliate to your knowledge with Passaic?
A I think so.

* * * *

[161] Q What did they do?
A We would establish who we would wish to have our [162] containers moved to the pier by.
Q You made that determination, by you I mean Dolphin?
A Yes.
Q How did they communicate that determination?
A By telephone.
Q Did they call up let's say Interocean Service and say we have a container at Passaic, take it down to the piers?
A Yes.
Q Who paid for that move?
A Dolphin.

Q Directly?
A Yes.
Q Who paid Passaic for it's services?
A Dolphin—for loading?
Q For loading, receiving, storing, stuffing, sealing.
A Dolphin.

* * * *

[166] Q (By Mr. Eisenstadt) You testified as to a conversation that you had with Mr. Semack in December, 1974.
What was Mr. Semack's tone of voice?
JUDGE JALETTE: Does that make any difference?
MR. EISENSTADT: I will withdraw that, your honor.
Q (By Mr. Eisenstadt) Mr. Semack is claiming he has stated his list of containers and they appear to be domiciled in Carlstadt, is that correct?
A Yes.
Q Did he explain how he obtained that impression?
A I don't think so.
Q Did he state to you why containers would not be leased to Dolphin thereafter?
[167] A Yes.
Q What was the reason given?
A That he was receiving funds of a thousand dollars per trailer on units loaded within the 50 mile radius.
This made it much too expensive for him to do business with us.

* * * *

[171] Q With respect to the Seatrain movements, did Dolphin prepare the ocean documentaton?
When I say ocean documentation, I mean, the ocean bill of lading.
A Yes.

* * * *

[175] MR. CARUSO: Your Honor, in view of that I would like to make an offer of proof at this time with respect to this.
I would first ask that this particular exhibit, that is, Respondent NYSA 1 be introduced and accepted into evidence.

JUDGE JALETTE: For what purpose?

MR. CARUSO: For the purpose of establishing that this witness as the operations manager for Dolphin, if I had continued to question him and as disclosed on this particular exhibit would have shown that the documentation prepared by Dolphin Forwarding Inc. to Seatrain lines for 1, specifically indicated that the cargo or the container that was being delivered to the carrier for shipment to Puerto Rico always disclosed Hanover, Massachusetts as the port of origin or Boston, Massachusetts regardless of whether that particular container was loaded at some other location, for example, at their agent's terminal in New Jersey; that this was done because of the restriction that they were well aware of—that Dolphin was well aware of on the rules of containers; that any container [176] that moved from a point outside of the 50 mile radius from the Port of New York would be permitted to move onboard the vessel without any handling by "ILA laborers".

This was the exception of the routes to containers and Dolphin knowing this exception specifically indicated on the documentation facts which they knew were incorrect in order to avoid the imposition of the rules on containers.

JUDGE JALETTE: Your offer of proof is rejected. The document will be put in the rejected exhibit file.

(Respondent Exhibit No. 1 rejected.)

Q (By Mr. Caruso) With respect to your conversations with Mr. Semack in December, 1974, you did indicate that you had occasion thereafter to discuss it, discuss those conversations with Mr. Bud Oschman.

When you spoke to Mr. Oschman did you make a statement to him that Dolphin had been found?

A I think it was something like that.

Q I assume that you had some understanding of what the word found meant and that I would also take it that Mr. Oschman understood what the word found meant?

A Yes, I think so.

Q What did you mean by the word found?

MR. PORTNOY: Objection.

He is asking for the witness' conclusion.

[177] JUDGE JALETTE: Overruled.

THE WITNESS: What is your question?

Q (By Mr. Caruso) What did you mean when you said we were found?

A That we were located loading cherries (phonetic) in the Carlstadt location.

Q Does not the would found presuppose that some action was taken by Dolphin prior so that Dolphin would not be found?

MR. PORTNOY: Objection.

JUDGE JALETTE: Sustained.

* * * *

[181] Q At the time that you had the conversation with Mr. Semack I take it that it was clear in your mind that you would not be obtaining ocean containers from MTM?

A Yes.

Q Was Dolphin in a position to continue to move it's cargo through the Port of New York at that time?

A I don't think so.

* * * *

[182] Q So that in effect the so-called railroad trailers that you are referring to were actually trailers either owned by, leased or under the control prior to August 1, 1974 by TTT and after August 1, 1974 PRMSA or MTM as the operating company for PRMSA?

A Yes.

Q So that you didn't, on your direct, you didn't want to leave any impression that you were able to utilize trailers other than trailers that were under the ownership control of the steamship carriers?

A I think not—will you repeat the question?

Q So that on your direct testimony you were not leaving [183] the impression that Dolphin was able to operate trailers other than those that were under the control or ownership of the steamship carriers?

A Yes.

Q To put it another way, but with the fact that the steamship carriers were providing Dolphin with the use of rail containers, Dolphin could not operate?

A Not through the Port of New York .

* * * *

REDIRECT EXAMINATION

[186] Q (By Mr. Portnoy) You testified that before on cross-examination as to the significance of obtaining a booking number and I think you testified that it signified two things, is that correct?

A Yes, I think it did.

Q Will you tell us again what it signified?

A One that you could draw a container to load and two, that that would be put aboard ship.

Q So that when you call for a booking number—during the course of calling for a booking number, did you at any point disclose who you were and by you, I mean Dolphin?

A Yes.

* * * *

[190] Q You indicated you had one instance where you didn't obtain the container from the steamship line, you obtained it from a transport company, it was a railroad container.

Was it a railroad container that was either leased or under the control of TTT or MTM?

A After we advised MTM that we have the piece of equipment and wished to load it aboard, they then assumed per diem lease.

Q With the railroad?

A With the railroad.

Q Dolphin never assumed that obligation?

A No.

Q So even though you are using the container, Dolphin is using the container, the steamship company is paying for the use of that container?

A Within certain guidelines, yes.

* * * *

[191] Was it possible for Dolphin to operate if it did not obtain ocean containers from the steamship companies?

A No.

* * * *

[206] MR. CARUSO: May I then make an offer of proof that if I did have the opportunity to examine on that, I would have elicited the following evidence?

JUDGE JALETTE: Well, have you got it prepared already?

MR. CARUSO: I have it prepared in handwritten form.

And I can read it to you.

It's not that long.

JUDGE JALETTE: You may, yes.

MR. CARUSO: If I were permitted to examine officers of San Juan and of Dolphin I would have elicited the following evidence:

One, that both San Juan and Dolphin hold themselves out to the general public as common carriers in interstate commerce.

Two, that these companies arrange for the assembly [207] LTL cargo into ocean containers.

That they also either arrange for themselves remove or distribute this LTL cargo out of the ocean container and distribute such cargo to the consignees thereof.

Three, that for these services these companies receive compensation for the entire package of services offered by them, including the assembly and distribution of LTL cargo.

* * * *

[209] RICHARD W. LEE,

having been first duly sworn, was examined and testified as follows:

JUDGE JALETTE: Be seated, please.

Give your name and address to the reporter.

THE WITNESS: Richard W. Lee, 11 Harley Street, Hangham, Massachusetts.

DIRECT EXAMINATION

Q (By Mr. Portnoy): You are the president of Dolphin Forwarding, Inc., sir?

A Yes, sir.

Q When was Dolphin formed as a corporation?

A 1964, July.

Q What state?

A Commonwealth of Massachusetts.

Q What does Dolphin engage in?

* * * *

[210] Q What is the function of a non-vessel operating common carrier?

A Receive shipment usually less than full load shipments, less than truckload shipments, move them in container and on its own bill of lading with its own responsibility from point of receipt through to destination terminal, breaks out the shipments, makes deliveries to the individual consignee.

* * * *

[211] Q Any of these individuals or any individuals at Hanover, Massachusetts perform sales functions?

A Yes, sir.

Q On behalf of Dolphin?

A Yes.

Q Who does?

A I do.

Q All right.

Would you tell us how you go about that?

A Well, we have advertising material which we [212] present to people who we know are shipping to Puerto Rico, offer our services, point out location of our facilities, explain our pricing and our customer services to them.

Q Okay.

Does any ocean carrier refer customers to you?

A No.

* * * *

[213] A We have shipments—we have received shipments originating in 1964 via shipments moving through the services of innercity transportation.

MR. EISENSTADT: Can I have the witness to raise his voice up?

I'm having a little difficulty hearing.

JUDGE JALETTE: Speak up.

A Yes.

Initially in 1964 shipments reached us in New York through intercity transportation.

In 1965 that was changed to New England Transportation Company.

Now, these two carriers were utilized by shippers as their ICC carrier for bringing shipments to the New York harbor where the shipments generally are containerized.

At this point they are sent to shipside, placed aboard ship, sent to Puerto Rico, discharged, taken by one of our companies in Puerto Rico, unloaded, delivered to all points and places in Puerto Rico and to the Virgin Islands.

[214] In 1969 the program was altered where we commenced using the two carriers who were principally or wholly container carriers, that is, their certificate was restricted to cargo moving prior to or after the—by water.

The shipments that moved in their services were their shipments on their billing.

We used that program through to 1974.

BY JUDGE JALETTE:

Q Who are these carriers you are talking about?

A These were interocean service corporation and two transport.

These were two carriers that were exclusively in the hauling of containers to and from shipside.

Q Is this in the United States?

A Yes.

* * * *

Q (By Mr. Portnoy): What ocean carriers were utilized in the movement of your goods since 1964?

A Seatrain Lines, TTT—that is Transamerican Trailer.

[215] Occasionally Sealand.

And after August of '74 it was MTM and PRMMI, which were operators of PRMSA.

* * * *

Q In the course of your operations you have obtained containers, is that correct, since 1964?

A Yes.

Q Okay.

Who furnished you or who—were those containers furnished you in Hanover, Massachusetts?

A No, sir.

Q Where were those containers delivered to?
A To the ICC carriers.
Q Did you engage in stuffing those containers with
[216] your—or utilizing your own employees?
A No.
Q Since 1964—will you tell us who stuffed those containers?
Who did you—since 1964.
A In 1964 they were loaded by Intercity Transportation in Long Island City.
In 1965 through 1969 they were loaded by New England Transportation in the Bronx.
In 1973 they were loaded by a warehouseman by the name of—yes, by Booth Freight Lines in Paterson, New Jersey.
In 1973 they were loaded by Passaic Terminal Warehouse in Hasbrouck Heights, in Carlstadt, New Jersey.
In 1974 and 5, they were loaded by Public Service Warehouse and by Park Service Corporation, both of which were in Newark, New Jersey.
Q Okay.
Were any of these employees represented by Deep Sea ILA locales?
By these employees, I mean the employees of Inter-City, New England, Booth, Freight Lines, Passaic Terminal, Public and Park.
A No.

* * * *

[228] Q Could you explain what you mean by LTL cargo?
A Okay.
The ocean carrier, namely Seatrain, developed an LTL program where they receive shipments as to—at a designated place.
And I think in this case it was Secaucus, New Jersey.
They—that organization, whatever it was, whether it was their own or not, I don't know.
I don't know.
All I know is that the cargo was contained by shippers to them as a carrier.

It was received, I'm quite sure, in Secaucus, loaded by those people in containers and the individual shipments remained identified as LTL shipments moving by Seatrain Lines and Seatrain's tariff, consigned to Dolphin International of Puerto Rico for distribution.

* * * *

[229] Q And you were not the exclusive deconsolidation agent for Seatrain in Puerto Rico?
A That's correct.
Q Were you at any time the exclusive agent for Seatrain Lines in Puerto Rico?
A I would—
Q When I say you, I am referring to Dolphin International.
A I know that.
I would have to say there were times we were close to it.

* * * *

CROSS EXAMINATION

[235] Q I would like to refer you to the testimony given by you before the Federal Maritime Commission on April 30, 1975 in Washington, D.C.
MR. PORTNOY: What page?
MR. CARUSO: Page 523, entitled Sealand Service, Inc. and Gulf of Puerto Rico Lines, Inc.—proposed rules on containers, docket No. 73-17 and 74-40.
Q A question was posed to you as follows:

Question: Mr. Lee, getting back to the time of your initial discussions with Seatrain in connection with the seed that led to the organization of Dolphin Forwarding, is it a fact that Seatrain offered to provide you with the means, with a ready means of soliciting customers?
Answer: It helped, yes.
It helped you solicit customers to that to that extent there was some assistance or inducement given by Seatrain for you to go into the LTL type of business?
Answer: No.
That just happened. It came.
Are you now changing the testimony you gave then?
A No, sir.

MR. PORTNOY: Objection.

The total testimony was not read into the record.

JUDGE JALETTE: You can read more if you want.

[236] He's asked his question and Mr. Lee has answered no.

Q You indicated on direct that no ocean carrier refers customers to you?

A I did not say that and that was not the question.

Q What did you say?

A I was asked as to whether the ocean carriers—it was in the present, not the past.

Q But at sometime the ocean carriers did refer customers to you?

A There was some help, but the carriers as such did not do it.

Q Did Seatrain help you solicit customers?

A As a company, no.

JUDGE JALETTE: How, if at all, if not as a company?

THE WITNESS: There were some salesmen that may have made some referrals.

Q Would one of those salesmen been Mr. Oshman?

A Yes.

Q What did Mr. Oshman and other employees of Seatrain do in the way of soliciting customers for Dolphin Forwarding?

A They did not solicit customers for Dolphin.

Q What did they do?

[237] A If they happened to have a customer or were going to have a customer—I can't speak for them, but this is my understanding of it.

And in the normal sales procedure that they would be going through, one thing that they did not have was an LTL program.

Q Referring to Seatrain?

A Yes.

Q Before you get into it, is it fair to state that at that time Sealand was in the Puerto Rican trade and Sealand did have an LTL program?

A Yes.

Q Continue with your narrative concerning what Mr. Oshman and other sales employees of Seatrain did.

A I just fall back on what I said, it helped.

Q How did it help?

A They could refer shippers to Dolphin as being a carrier that is performing service, LTL service to Puerto Rico.

Q Would these shippers have in the past been using LTL service provided by Sealand?

A Not necessarily.

Q But some did?

A I don't know that.

* * * *

[242] Q During that period of time—let's take 1964 to 1968—when—what carrier did Dolphin use in the Puerto Rican trade?

A Seatrain.

Q Was this done because of Seatrain's promise to help you, Dolphin Forwarding, solicit customers?

A No.

Q Why did you feel it was necessary for you to use Seatrain exclusively when Sealand also provides a service in Puerto Rican trade?

A Seatrain never solicited our cargo.

Q But you testified that it helped to solicit customers.

A I'm sorry, what did I just say?

Q You said Seatrain never—

A No, Sealand never solicited our cargo.

They never asked us for any of our cargo.

Q Isn't it a fact as an NVO—and you do at the present time—use more than one carrier to Puerto Rico?

A Yes.

Q Why do you do that?

A Well, the answer is not to put all our eggs in one [243] basket.

Q Doesn't it also give you more flexibility in terms of moving containers on any given day during the week?

A Yes.

Q Do these carriers have sailings on different days of the week?

A Yes.

Q So if you had a container you wanted to move on Tuesday you would move it on the carrier that had a sailing on Tuesday rather than wait for another carrier that would have a sailing on Friday?

A That would be an ideal—

Q You try to reach that ideal?

A No.

Q You do not?

A No.

Q Why do you use more than one carrier at the present time?

A We want to be able to have the equipment we need to provide the service we need.

Q And yet from 1964 to 1968 you did not feel it necessary to use other than—to use any other carrier other than Seatrain in the Puerto Rican trade?

A We did not feel it necessary.

Q Did you continue to use Seatrain exclusively after
[244] 1968?

A Yes.

I don't know how exclusively now.

Excuse me on that one.

For the most part we continued to use Seatrain after 1968.

Q At what point did you begin to use carriers other than Seatrain?

A 1974 I think we commenced using TTT if I have my dates right.

Q 1974?

A Yes.

Q Was there a reason you did that in '74?

A Yes.

Q What was the reason?

A Seatrain no longer measured up to the standard we needed.

Q What does that mean?

A Exactly what it says.

They no longer had the service that they had prior to that time.

Q They were still moving ships.

They still had vessels moving from New York to Puerto Rico?

A Yes.

Q What changed at Seatrain which necessitated your
[245] moving over and utilizing the services of TTT?

A Schedules were different.

Attention was different.

Q Did TTT solicit your business?

A Yes.

Q But you did indicate that there were occasions when you did ship containers on board Sealand vessels?

A That's right.

Q Didn't they solicit your business at that point?

A No.

Q Then you went to them and directly asked for the use of their service?

A Yes.

Q You did not feel it necessary to do that in the years when you used Seatrain exclusively?

A No.

Q Why?

A Because service by Seatrain was suitable.

Q It wasn't because you had an arrangement with Seatrain whereby you would use them exclusively if they helped you to solicit customers?

A No.

Q You indicated on direct that Dolphin never employed labor to physically load ocean containers?

A Yes.

[246] Q And you also used what you term agents?

A Yes.

Q And these agents always had facilities within the New York-New Jersey area?

A Always?

Q Well, I think you gave a list of the various agents you used.

When you indicated the address of their facilities, you said they were either in New York or New Jersey.

A Right.

Q Would all of them have been in the New York metropolitan area?

A Yes.

Q Would they all have been located within 50 miles of the Port of New York?

A Yes.

* * * *

[248] Q (By Mr. Caruso) I show you GC-7.

I ask you why this cost comparison was prepared in 1974.

A We were assessing our options to find out what we could do, what it would cost if we did this or did [249] that.

The only purpose was to put it down on paper so we could look at it, we, the company.

Q Was there any incident that caused you to consider these options?

A Yes.

Q What was that?

A No longer able to load containers and move them through the Port of New York without having the cargo handled at a service charge.

Q Rehandled where, at the PRMMI facility?

A Right.

Q Was this as a result of conversations had with Mr. Semack of MTM who indicated that in the PRMSA service all LTL shipments would be handled by PRMMA and not by MTM?

A I don't think he said that to us, did he?

I don't think we testified he said that to us.

Q How did you know it was necessary for you to have your cargo handled by PRMMI as opposed to MTM?

A The only show in town.

He wouldn't accept any more of ours.

Q Isn't it a fact that the only show in town was actually one carrier, PRMSA, having one tariff before the Federal Maritime Commission and MTM and PRMMI were merely components of PRMSA?

[250] They were managing companies for PRMSA but the vessels were PRMSA's vessels?

A That's my understanding but I wouldn't say merely, no.

Q What was your understanding for your conclusion that you had to bring your cargo to PRMMI as opposed to MTM?

A He wouldn't accept any more of our cargo.

It said it was too expensive.

* * * *

[251] Q And your comparison, GC-7, was prepared to determine whether, from a cost standpoint, it made more sense, and was more economic to move the Jacksonville over an ocean carrier that did not have ILA represented [252] employees or whether you should go and bring your cargo break bulk to the PRMMI facility where it would be loaded into ocean containers by ILA represented longshoremen?

A Correct.

Q So that your decision to go to Jacksonville was strictly based on dollars and cents?

A Yes.

Q And if it had been cheaper to use PRMMI and to have the longshoremen load the containers, you would have no objection?

A I wouldn't say.

Q If it was cheaper you wouldn't have brought it to the piers, to the PRMMI facility?

A If we decided to stay in business at all, yes.

Q I take it when you arranged to have containers loaded by various off-pier agents, including Pacific Terminal, that you also took into account the cost involved in having it done off pier as opposed to done by the ILA longshoremen at the pier?

A We did not consider that at all.

Q Is it fair to say if it was cheaper to have it done at the pier that would not have made any arrangements with these off-pier warehouses and trucking stations?

A I'd have to give that consideration from—we never considered it.

* * * *

[257] You asked me, sir, as to the handling of your cargo why we had not considered someone like Sealand at the pier.

And I had forgotten that tariff did provide that.

This is back before this whole business.

Always did provide for the receiving of shipments for customers.

And they gave a time frame, receive it within certain time and we will charge so much for receiving and preparation of the manifest.

Q Would that charge be greater than the cost incurred at an off-pier facility?

A Much greater.

* * * *

[262] JUDGE JALETTE: As I understand your deception defense and I may be mistaken, the consolidators being knowledgeable in the ways of this world and in the way of having to ship containers, I gather you would show that they tried to hide the fact that they were the shippers.

Otherwise their containers would come under the provisions of the rules on containers.

He would have to be—they would have to be stripped and restuffed.

That's what you want to show?

Is that it?

MR. CARUSO: No.

What did they, from what I gather, from what I have seen, in the case of Dolphin and San Juan, indicated on the shipping documents—

JUDGE JALETTE: That they were to be—they were somebody else's?

MR. CARUSO: No.

They were Dolphin but they were loading the containers not within the geographic area in which the ILA was exercising its jurisdiction.

JUDGE JALETTE: Let's—all right.

They were hiding the fact that it was within the 50-mile area?

MR. CARUSO: That's correct.

[263] JUDGE JALETTE: That was so that they could get their container through the port.

MR. CARUSO: Correct.

JUDGE JALETTE: What respects would that be relevant here?

MR. CARUSO: Well, we must remember that before the containerization—

JUDGE JALETTE: If they were going—if they were doing work for their own customers and not on behalf of the members of the shipping association, what difference does it make?

What difference does that make?

MR. CARUSO: Well, may I raise this but for argument?

But for containerization the cargo that these customers had been shipping would have been shipped through the Port of New York.

It would have been handled at the pier by ILA longshoremen.

But for containerization.

JUDGE JALETTE: Yes.

MR. CARUSO: Now, containerization comes on the scene and the ILA says NYSA will compromise with you here.

It will compromise.

[264/274] We will let you use containers.

But any cargo that originates within this small geographical area we have a superior claim to.

We have a superior claim because we have always done it traditionally before containerization came into the picture.

But we will allow you to have your containers stuffed off pier provided they are stuffed outside of the 50-mile radius of the Port of New York.

JUDGE JALETTE: Outside a 50-mile radius of the Port of New York.

MR. CARUSO: Yes.

Provided they are stuffed outside of the 50-mile radius of the Port of New York.

But with respect to the 50-mile radius, that cargo has to come down to the piers and it must be loaded by us at the piers.

JUDGE JALETTE: Excuse me.
Off the record one moment.

(Discussion off the record.)

JUDGE JALETTE: On the record.
Continue, Mr. Caruso.
MR. CARUSO: NYSA agreed.

That was the collective bargaining agreement between NYSA and on behalf of its members and the ILA, the collective bargaining agreement.

[275] Now, some point the NVO comes on the scene.

A knowledgeable person having—in Mr. Lee's case eighteen years of experience in the, what we call the domestic trade.

And that is coast-wise and inter-coastal, ports along the continental United States.

And with this experience and knowledge he goes to see Seatrain Service, Inc. and they discuss the possibility of Dolphin being used for the purpose of soliciting LTL cargo so that that cargo would not go to Seatrain's competitor, Sealand and be handled at the pier but rather would be handled off pier by Dolphin or for the account of Dolphin.

And it would move on Seatrain vessels.

Now, Seatrain did this with full knowledge that there was a collective bargaining provision to which they were a party which said that any cargo originating within the 50-mile radius of the port of New York was claimed by the ILA Seatrain was aware of it.

Dolphin was aware of it.

And Dolphin took steps to avoid that claim.

And but for those deceptive practices the ILA would have exercised the claim and the ILA would have handled the cargo at the piers.

That's our defense.

[276] And I again implore you to give us an opportunity to examine on that defense.

JUDGE JALETTE: I think it's a repitition of the defense which was made essentially in Conex.

MR. EISENSTADT: Yes, but let me point out something.

With respect to Judge Ordman's statements as to deceptive practices, I would like to note that Member Fanning in his dissenting opinion in the Associated Transport, looked to that very fact in the ports of Hampton Roads and Baltimore as a distinction whereby he, a member of the original panel, could come to the conclusion that work preservation could be and was there in those ports a valid objection of the ILA right at this point—and I'd like to note that for the record because I think right now it belongs here, your Honor.

We have before the second circuit a petition for recall of a mandate and reconsideration by the board, the very board whose precedent is being cited here, to consider whether or not similar deceptions which can be uncovered subsequent to the decision in Conext should be considered by the board to possibly reverse its decision in the Conex case itself.

I think the deceptions here and the fictions that surround the establishments of that decision is very much at the heart of the whole proceeding, not only [277] here, but in Conex as well.

I think as to—in view of everything that is happening here, in view of the fact that the board relied on Judge Ordman's finding that proof of deceptions and extraneious circumstances may have—

JUDGE JALLETTE: The board did not rely.

MR. EISENTADT: The board accepted the findings basicaly of Judge Ordman on the facts.

They differed with him on the conclusion.

JUDGE JALETTE: And said not one word in their decision about the issue of any deceptive practices.

They found the consolidated and Twin had been performing this work for years.

MR. EISENSTADT: Yes.

I have no disagreement with it.

But the fact that the board agreed essentially with the factual development of the analysis in Judge Ordman's opinion does not mean they had to refer—

JUDGE JALETTE: I am totally unpersuaded.

Whatever Judge Ordman had to say about deceptive practices died in his decision and did not obtain any life

at all by reason of the fact the board did not avert to the one way or the other.

I will not—I cannot—that cannot be construed as the board stating this would be a [278] relevant issue in determining whether or not a consolidator is entitled to work.

MR. EISENSTADT: Only the board could really know that because the board is the one that issued Conex.

JUDGE JALETTE: At this point I am in a position of having to make rulings on a case which I think follows Conex.

And all I can tell you is my construction of the Conex decision does not open the door to a litigation of deceptive practices.

MR. EISENSTADT: Is it your Honor's position that if deception were shown in Conex that the board necessarily would have arrived at the same conclusion?

JUDGE JALETTE: Yes.

MR. EISENSTADT: Could I get some elaboration of that?

I can't understand.

JUDGE JALETTE: I think the board has said that traditionally it is not the work of the ILA to stuff and unstuff containers.

Its job is to load and unload vessels.

MR. EISENSTADT: The board did say that incident to the loading and unloading of vessels was the stuffing and stripping of containers, isn't that correct?

JUDGE JALETTE: That's right.

[279] MR. EISENSTADT: In the case which was dealt wity by the board in Conex, the facts of that case, they found that there was an off-pier tradition which was constant with the similar position down at the pier, namely the incidental handling in the stuffing and stripping of containers.

Now, what if the board should subsequently find, and I don't say this is all hypothetical because right now it's in the works, but let's say the board should subsequently find there was deception, that this off-pier tradition was created and developed by the off-pier consolidators, by the use of certain manipulations.

Let's say bribery.

Let's say falsification of documents, and so on.

It does not stand to reason that that tradition wouldn't fall apart.

JUDGE JALETTE: Mr. Eisenstadt, I'll give you the answer, which is, I will not permit that to be litigated here.

You have the consolidation, you are telling me that you are trying to obtain litigation in the Conex case, it is through motion for reconsideration before the board of appeals in an attempt to get it remanded back to the board.

That will be the forum that it will be heard in the [280] board—if the board—if the court and the board undertake to do so.

I will not undertake to hear it unless the board directs me to do so.

MR. EISENSTADT: Of course, I take exception to your Honor's position.

However, I still believe that it would, for the sake of economy and efficiency it would still behoove your Honor in this proceeding to at least let it appear on the record.

Because if it should turn out that in Conex there should be a change of mind on the part of the board, then why have to relitigate this proceeding.

JUDGE JALETTE: We wouldn't have to.

The general counsel would probably undertake to move to dismiss his complaint if that were the case.

MR. EISENSTADT: I would like to share your Honor's optimism.

JUDGE JALETTE: As I have indicated, you can protect your record by making an offer of proof so that the board will have before it the proper basis for making a ruling.

BY MR. CARUSO:

Q Mr. Lee, were you present at the pre-hearing [281] conference which counsel for the respondents and counsel for general counsel were present in July of 1977?

A Yes.

Q And at that time did I not request you to provide me with a—with copies of bills of lading, select group of

bills of lading prepared by Dolphin, which would reflect —strike that—which related to movements made—movements of containers made by Dolphin which showed Dolphin as the shipper of that container?

A Yes, sir.

Q And have you collated the specific documents that I requested?

A I did.

The company has them.

Q Do you have them in your possession?

A Yes.

Q Would you produce them for me?

MR. PORTNOY: I object.

I see no relevant purpose for the production of these documents at this time.

JUDGE JALETTE: Mr. Caruso?

MR. CARUSO: You Honor, frankly I intend to use these documents for the purpose of again examining in the area of deceptive practices.

[282] JUDGE JALETTE: All right.

MR. PORTNOY: I have an objection to that.

JUDGE JALETTE: All right.

I will not direct the production of the documents on the grounds that it is for the purpose of examining in an area which I find is not relevant to the issues in the case.

MR. CARUSO: May I make an offer of proof?

JUDGE JALETTE: Yes.

MR. CARUSO: Had the documents been produced and had I had the opportunity of examining the documents, offering them into evidence and examining Mr. Lee on these documents, I would have established here that Dolphin deliberately indicated on documents presented to the steamship carriers that the origin of the container was outside the 50-mile radius of the Port of New York, and that this was done in order to deceive ILA employees at the steamship company pier facilities into thinking that Dolphin containers would not—was not subject to the rules on containers.

In that fashion Mr.—strike that—Dolphin Forwarding was able on that to obtain unrestricted movement of con-

tainers from the time it was formed in 1974 until the first time this deception was discovered in December 1974.

That is my offer of proof, your Honor.

[283] JUDGE JALETTE: Offer of proof rejected.

MR. CARUSO: I take exception.

Q I just want to ask you several other questions just to make it clear in my mind the reason why you decided to go to Jacksonville, Florida.

From what I gathered from your testimony, and you correct me if I'm wrong, you engaged in the cost comparison, the operation in New York as opposed to the cost of operating via Jacksonville, Florida.

You did that on general counsel exhibit 7, and on the basis of the fact that it was cheaper to use the Port of Jacksonville as opposed to the Port of New York, you proceeded to discontinue your operations in December 1974, in the Port of New York, and to move all of your shipments to the Port of Jacksonville, is that correct?

A The action is correct.

The terminology would be that we diverted the cargo to Jacksonville.

Q Is it fair to state that your objection to using the Port of New York was not because you were prohibited from continuing to use the steamship carriers, but rather because it was more costly to use the steamship carriers in the Port of New York.

A May I have your question again, sir?

[284] MR. CARUSO: Would you read it back?

(Record read.)

MR. PORTNOY: Objection.

That's a non-sequetor based on the present testimony that's been developed.

JUDGE JALETTE: Overruled.

MR. CARUSO: I'm sorry?

JUDGE JALETTE: Overruled.

A I can answer?

JUDGE JALETTE: Yes.

Q Yes.

A The answer is yes.

MR. PORTNOY: To what?

MR. EISENSTADT: The question.
MR. PORTNOY: Sorry about that.
Q It's also fair to state that the steamship carrier in New York, and there was only one at the time in 1974, that is PRMSA, did not indicate to you that it was ceasing business with you?
MR. PORTNOY: Objection.
It's argumentative.
MR. CARUSO: It's not argumentative, your Honor.
It's a fact.
JUDGE JALETTE: Overruled.
A I can answer?
JUDGE JALETTE: Yes.
[285] A If I recall correctly, Mr. Caruso, I was obliged to change testimony because it wasn't first-hand.
It came to me.
Would you respect, sir, that the information that came to my company did not come directly to me?
Q I'm afraid I'm lost as to what you're alluding to, Mr. Lee.
A You or Mr. Schecter, I forget—
Q I think it is going to be very confusing if you refer to incidents that occurred at the FMC proceeding because no one here other than myself and yourself are aware of those proceedings.
A That's why I'm having trouble answering your question, because what happened, and what I heard myself first-hand is two different things, right.
JUDGE JALETTE: Can you answer the pending question?
MR. CARUSO: Would the reporter read back the pending question?
JUDGE JALETTE: If you can't answer it just say you can't.
Would you read it back, please?

(Record read.)

A That question is no good.
I can't answer that.
Q Was Dolphin ever advised by PRMSA that PRMSA would not accept shipments of Dolphin to Puerto Rico?
[286] A No.

Q PRMSA is the carrier in the Puerto Rican trade in late 1974, is that right?
A Yes.
Q And PRMSA was the only carrier to Puerto Rico operating out of Port of New York in December 1974, is that right?
A Yes.
Q And PRMSA never refused to do business with you in December 1974, is that right?
A That's correct.
Q And your decision to move to Jacksonville was a voluntary decision on the part of Dolphin to do so because it was cheaper to move out of Jacksonville than out of Port of New York?
A Yes, sir.
Q Did any representative of the International Longshoreman's Association ever contact Dolphin Forwarding, Inc?
A Yes.
Q When?
A To the best of my knowledge it would have been around October or November of '74.
Q And who was this representative?
A I don't know.

* * * *

[290] Q In the period 1964 to 1968 what were the sources for Dolphin's customers?
How did you obtain customers?
A I solicited their business.
Q And what resources did you rely on for soliciting their business?
A My own.
[291] Q Did you use any lists?
Did you use any information becoming available to you to know who to go to?
A No, sir.
Q How did you go about doing it?
A I had been in business for some 18 years.
I knew the market.
I knew who the shippers were.

8 percent of the cargo moving to—for export moves to Puerto Rico, 8 percent of New England originating cargo goes to the State of Texas.

I was familiar with the people and generally those who ship to Texas also shipped to Puerto Rico.

So it wasn't too difficult for me to knock on doors to find out for sure which ones were and which ones were not.

Q And do you know where or did you learn how these people had been shipping their goods to Puerto Rico prior to your solicitation?

A Yes.

Q What did your knowledge reveal, your inquiry?

A Most of them were using another NVO.

Q Now, you are talking about the people in New England?

A Yes, sir.

* * * *

[297] Q What services do you provide to your customers as an NVO or doing business as you have been doing business since 1964?

A You said customer service.

You did not—

JUDGE JALETTE: All right.

What services do you provide to the customer?

THE WITNESS: That's what threw me off, I'm sorry.

Q Now that you understand my intent, could you answer that?

A Okay.

We go back to what an NVO is then, right?

JUDGE JALETTE: No.

Just what do you do for a customer.

That is a very simple question.

If I've got goods, I want to send to Puerto Rico, what are you going to do for me?

A I love the opportunity to sell.

I'm sure with some time I could persuade you it would [298] be very nice to use my service.

They are very good, the price is right, our attention is right.

We've got good reputation.

We are serving a lot of good customers.

JUDGE JALETTE: So far you haven't gotten a shoe out of my plant.

How are you going to get my shoes from Brockton, Mass., to San Juan, Puerto Rico?

THE WITNESS: I don't do that.

JUDGE JALETTE: Then what do you do?

THE WITNESS: I will receive your shipment of shoes at our designated facility, but not from your source.

You have to use your ICC carrier for bringing it to us.

We have no ICC authority.

JUDGE JALETTE: Do you provide any service to the manufacturer in connection with arranging for the shipment of his product from his plant to let's say Passaic, New Jersey?

A No, sir.

JUDGE JALETTE: I see.

So when do you start providing services to the manufacturer?

[299/300] A When it reaches me at the facility that we have designated.

JUDGE JALETTE: What is the service that you provide him?

THE WITNESS: At that point in time we issue a bill of lading, charge you for the service.

We load the shipment.

We move it to Puerto Rico and we deliver it.

JUDGE JALETTE: You deliver it to the point of destination given you by the manufacturers?

THE WITNESS: Yes, sir.

Q So as I gather it, Mr. Lee, you never—you or your employees never touch any of these goods, is that right?

A I or my employees.

Dolphin Forwarding, correct.

Q And all you do—not all, but what you do is you handle the paper work and the telephone communications, is that right?

A We perform common carrier service.

Q But you don't transport any of the goods, is that right?

A Yes, we do.

We are a carrier.

We are a non-vessel operating common carrier.

[301] Q But you don't actually have any vehicles, vessels or other facilities for moving that cargo, is that right?

A Dolphin Forwarding does not.

That is correct.

Q The interconnects with people by phone and by mail and so on to arrange for the movement of goods from one place to another.

A From one terminal to another.

Q Well, from the plant, let's say in Brockton—

A No, sir.

Ports only.

Atlantic ports only to all points and placed in Puerto Rico.

Q Have you operated through the Port of Boston?

A Yes.

Q When?

A When?

Q Since 1964?

A Yes.

We operate through the Port of Boston.

Q And whose facilities did you use?

Will you give me an example of how you operate through the Port of Boston?

A We would have an agent in the Boston—Port of Boston area doing the same thing that an agent is doing [302] in New Jersey and in Jacksonville, Florida.

* * * *

[305] Q From your viewpoint was Seatrain in competition with you?

A Oh, yes.

* * * *

[306] Q Mr. Lee, are you familiar with a gentleman by the name of Paul Semack?

A Yes.

Q Will you identify him, please?

A He was the vice president of Transamerican Trailer Transport.

* * * *

[309] Q Going now to the cost factor for a moment, in 1974 were you using what warehousemen's facilities for stuffing of containers?

A '74 would have been Passaic Terminal Warehouse.

Q What did it run you labor-wise to have a container stuffed?

[310] A Well, I don't know if that is for public knowledge.

But 50 cents a hundred.

Q At that time do you know what it would cost down at the piers?

A Yes.

If we could qualify for the item that was in the tariff it would have been 70 cents a hundred plus a charge for the preparation of the manifest and I've forgotten the price for that.

* * * *

[315] Q You referred to various entities that performed work for Dolphin, Passaic, Park, Public.

Are you familiar with the general nature of their business?

A Yes.

Q What is it?

A Warehousemen, distributors.

[316] Q They just—their work is not limited to stuffing and stripping containers?

A No, sir.

Q What other type of work do they do?

A Local warehousing and local distribution.

Q Having nothing to do with ocean going cargo, is that right?

A Some of it did.

If the cargo that was assigned to their warehouse it could have come from overseas and had come in by ocean carrier.

Q When cargo was delivered prior to being stuffed it was stored in the warehouse, is that right, awaiting a container or a full container load, is that right?

A Yes.

Q Are you—were you charged anything for that, that storage?
A Yes.
Q What was—was it on a daily basis?
A No.
Q Or weight basis?
A No.
It was all in the price.
It was all negotiated the price that I had already mentioned, covering everything.
[317] Our freight doesn't stay still too long or we would never keep his shoes.
Q What was your arrangement with those carriers? First they had to receive the merchandise, is that right?
A Yes.
Q Then they stored it if it was waiting for a container?
A Floored it versus storage.
Q Okay.
And then they stuffed the container, is that right?
A They loaded the container.
Q What other services, if any, have I not covered?
A Service local phone calls from customers, picking inquiries, scheduling—
Q Customers within direct contact with Passaic, let's say?
A Sure.
Our customers knew where our receiving facilities were and they may have wanted to find out the latest on schedules as to what time they had to get it there.
They may have called them for pick-up service.
They may have been called by a steamship company to find out how many loads are coming.
They may have called for some bookings.
They may have called for—they would have called
[318] They may have called for—they would have called for the necessary arrangements to get the equipment that they would need in the event that the equipment was not available to them.
They would give us a loading manifest and they would prepare in the mailing the necessary material that we would need at destination to check the outturn, to make sure it was correct.

Q All those services were performed by the warehousemen, is that right?
A Right.
It would be the services that we would perform ourselves if they were our facilities and our people.
It is a totally—all-service. It is an agency service.

* * * *

[327] Q Can you give us an example of freight all kinds?
A Yes.
Any item—items of three or more, none of which exceed 70 percent of the total and no component part which would exceed 25,000 pounds in a 40-foot container.
Q Now, what—as compared to the A.Q. rate, how would that compare?
A That would be lower.
Q Considerably lower?
A Depends upon the mix.
Q What would be the next higher cost type shipment?
A The truckload application on the specific items.
Q What would that consist of?
A The next highest—well, we are talking about now a non-qualifying freight all kinds load.
Say a shipment—a component load exceeded 5,000 pounds or certain descriptions exceeded 70 percent of the lading or we only had two items, didn't have three, then we would have to abide by the tariff and pay that.
It could be more than the freight all kinds.
We don't do that.
Q Why not?
A It's too expensive.
[328] Q You limit yourself to the A.Q. and the FAK, is that right?
A Yes.
Q Now—
JUDGE JALETTE: Do you have much more?
MR. EISENSTADT: Not much more.
Q At the time that Dolphin went into business in '64 were the A.Q. and the FAK in effect?
A Yes.

Q From your prior experiences do you know when the FAK first came into existence?

A It came in when they first published their tariff to Puerto Rico, the initial tariff.

Q That was about when?

A Sir?

Q That was about the—about when, date-wise?

A '63, somewhere in there, 1963.

Q That's when the FAK as far as you know—

A As far as Seatrain was concerned.

I was familiar with that tariff.

Q Were you familiar with any other tariffs?

A Yes.

But not to Puerto Rico.

Q Let me get clarification on that.

Were you familiar with other tariffs but no other Puerto Rican tariffs?

[329] A That's correct.

MR. EISENSTADT: Just one second.

(Pause.)

Q You just testified that you are familiar with the Seatrain tariff to Puerto Rico.

Do you know whether any other carriers were offering FAK in the Puerto Rican—in Puerto Rico and run at that time?

A At that time I do not recall.

Q Do you recall when other carriers were offering FAK rates to Puerto Rico?

A It is such a common practice, I didn't know that one did and one didn't.

I would have presumed that they all did.

Q Now, as a result of the FAK rate, were you receiving any lesser services as a consideration for getting that more favorable rate?

A Yes.

Q In what sense?

A We had to do the loading and the unloading.

Q But other than that?

A No.

Q There was no other compensating factor?

A No, sir.

It's an item in the tariff.

[330] Either it qualifies or it does not.

Q So you as a consolidator were able to obtain FAK by doing the loading and unloading?

A Yes.

Q Now, you expressed familiarity with the FAK rate in the Seatrain tariff.

Are you personally familiar with how that FAK rate was derived?

MR. PORTNOY: Objection.

What difference does it make?

JUDGE JALETTE: Objection sustained.

MR. EISENSTADT: Your Honor, consolidators were using a certain rate.

There must have been some basis for it.

I think we have a right to find out what it was.

JUDGE JALETTE: What difference does it make how it was derived?

MR. EISENSTADT: The FAK rate takes into consideration certain things.

The witness just testified that he has to load and unload it.

That was a consideration for obtaining the FAK. It should be obvious then that the ability of the consolidators to find was directly related to the ability to get an FAK rate or an A.W. rate or some rate that enabled them [331] to be competitive to establish a tradition.

MR. PORTNOY: has no bearing on the issue of whether or not their customers are subcontractors.

MR. EISENSTADT: I am not even talking—

MR. PORTNOY: I don't think it is in dispute that the FAK rate is opened to anybody who qualifies under the ocean tariff.

I don't think there is any dispute—

JUDGE JALETTE: You are getting away—he's indicated that he gets the FAK rate and he gets it because he can unload the container.

How they arrive at the FAK rate, which was your last question, seems to me to be irrelevant.

MR. CARUSO: The FAK rate presumably was a creature of the steamship carrier.

The steamship carrier developed the rate.

If the steamship carrier developed the rate and the rate was lower than other rates because the physical handling of the container—of the contents of the container was going to be done off pier, then it would seem to me that this in effect was a conscious decision by the steamship carrier to offer this rate, thereby giving an inducement to have the contents of the container stuffed off pier, saving the steamship carrier the cost of him doing it on the pier.

[332] [In effect the steamship carrier is subcontracting the loading and unloading of that container off pier.

You don't have—

JUDGE JALETTE: I am not persuaded.

I understand your position.

I don't agree with it.

MR. EISENSTADT: Your Honor, at this point, since we are concluded from examining the witness at this point, I would like to make an offer of proof.

That if counsel were permitted to examine the witness, if counsel were permitted to develop the evidence in this area, it would show that the FAK rate was developed at a point in time which was consonant with the development of containerization.

That the handling of less than container loads which the ocean carriers found either burdensome or uneconomical, propelled them to develop a rate called an FAK rate, which induced and solicited the interest of off-pier—of persons to develop off-pier facilities and off-pier arrangements such as in this case Dolphin, San Juan and other off-pier consolidators, and which develop the so-called tradition of the off-pier consolidator as a direct or indirect conscious action of the ocean carriers who are members of NYSA.

* * * *

[335] Q (By Mr. Eisenstadt) Mr. Lee, when you arranged for the pick-up of cargo destined to be transported by ocean-going vessel from a manufacturer or

other so-called customer, I believe you indicated that the customer would use his own—make his own arrangements to get it to your facility, your agent's facility, is that correct?

A To the end of the question.

You said that we arrange, we do not arrange for them, no.

Q But it would call then, nevertheless, for the customer to take care of that aspect of the movement, is that correct?

A The customer would call his carrier, yes.

Q All right.

* * * *

[341] Now, in order to get this matter straightened out, let's take this whole process step by step from the point where you learn from customers that shipments are going to, let us, Passaic warehouses.

At that point you need a container, is that right?

A Yes, we need a container.

Q Okay.

How do you go about obtaining that container?

A All right.

Passaic terminal warehouse could have the equipment in possession at its warehouse.

Q When you say equipment, could you be more specific?

A Trailers. Trailer containers.

Q How would it have gotten there?

A Shipment has been imported—

JUDGE JALETTE: Let's assume it doesn't have any.

Q Let's start fresh.

[342] A All right.

It then runs to the facility of the shipping company as to whether they locate a pool of their location, trailers, containers, drawing that equipment on the permit of the booking number.

Q Now, stop there and go back a bit.

Who arranges for obtaining the container?

A The agent.

Q What agent?

A Passaic Terminal Warehouse.

Q You tell Passaic that a container is needed, is that how you do it?

A No.

They know they need one.

Q Automatically?

A Yes.

Q Do they obtain the container?

A Yes.

Q Over your name?

A Yes.

Q All right.

A As our agent.

Q How do they do this?

A They dispatch their tractor—

JUDGE JALETTE: That's the physical way.

[343] We don't care about the physical way they do it.

Q We know they have to bring it there.

What procedures do they go by?

What papers have to be drawn, what telephone calls, if any, have to be made?

How do they go about it step by step, within your knowledge?

A They have been given the booking number.

Q By whom?

A They could get it themselves, by calling up the shipping company.

Q What does that booking number consist of? What does it represent?

A It's a series of numbers which has meaning to the steamship company that it covers one or more containers, trailers, which go aboard a certain vessel.

Q Mr. McHugh testified yesterday, if I recall correctly, that the booking number meant two things to him, one thing it meant getting a container.

The other thing it meant that there was going to be a place aboard a vessel.

Does that mean the same thing to you?

A Yes.

Q Could you conceive of a booking number meaning only obtaining the container but not having a place to board a [344] vessel?

A No, sir.

Q Well, in your experience have you ever had that happen to you, that a booking number is given but you didn't have a place to board a vessel?

A Yes.

We have missed some sailings.

Q You missed the sailings.

Had you been on time you would have been aboard the vessel?

A Yes, sir.

Q All right.

We have the booking number.

You don't obtain the booking number, your employee does necessarily obtain that booking number, is that right?

A Not necessarily.

Q So, Passaic gets a booking number.

Then what does it do?

A It knows it needs equipment because it is receiving cargo consigned to move via Dolphin to Puerto Rico.

It could be a Monday.

It could be a Tuesday.

He knows from momentum how much equipment, trailers he is going to need.

He has a booking number.

[345] There has been an estimate that's made as to how many trailers will be needed to service the flow of cargo in a given week.

Q He will have to get that from you, won't he?

A Unless he has called and got it himself.

Q From your customers?

A No.

From the steamship company.

Q How does he know how much cargo is coming in?

That's what I meant.

A That's what transportation is all about.

We do know based upon performance in the past.

Q He knows so many shoes are going to be coming in because every week a certain number of shoes come in, is that what you mean?

A That's an example.

Q Now he has got a booking—he knows the cargo is coming in.

And a booking number is obtained.

What happens then?

A A driver is dispatched.

He is given that booking number.

He goes to the—

Q Just before that point.

Under what authority does he obtain that container? [346] I mean, does the container just willy-nilly go to anybody that requested a booking number?

A Not without the booking number.

Q What entitles him to a booking number?

A A need, you request it and it is given to you.

Q If I called down to Seatrain or Sealand they are going to give a booking number? They don't know?

A If they—

Q They would give me their container, they will give me maybe even a chassis with it just because I call for it?

A Yes, sir.

Q Without security, without anything?

A That's right.

They won't give it to you without security, but they will give it to a carrier—

Q Why?

A (Continuing)—who has an agreement on interchange of equipment.

An equipment interchange agreement that the motor carrier has.

Q What is this interchange agreement consist of, as far as you know?

A Yes.

This depends upon what has been negotiated between the steamship company and the specific motor carrier.

[347] It does vary.

But in general it is for a small activity on a one for one basis, which we refer to, they will say, as the carrier has already furnished services to show that it qualifies to protect the equipment containers in the event it is damaged while it is in their care and custody.

And the interchange agreement form is endorsed by both the driver and the dispatcher on the pier, and there is outlines as to what equipment looks like, what marks, a hole here, a dent there, a slash in his tire.

Q Is there a master interchange agreement that covers the ongoing relationship between the carrier and the—I am talking about the ocean carrier and the motor carrier?

A I wouldn't know that, sir.

Q So, each time he goes down he gets a—they sign these slips and the equipment is transferred to the carrier, is that right?

A Yes, sir.

Q All right.

Now, as I understand it, you don't have any trailers, is that right?

A Yes, sir, we do not.

Q You do—

A Yes, sir, we do not.

Q Okay.

[348] Are you party to any interchange agreements?

A No, sir.

Q With any carrier, any ocean carrier?

A With no carrier, period.

Q All right.

Now, Passaic has obtained a container.

What does it do?

What does it do with the container?

A It places it at the facility and commences to load our cargo.

Q Now, under that interchange agreement it entitles or gives the motor carrier, whether it is an independent or whether it's a subsidiary of Passaic or son, gives them the right to take that container and move it away from the pier, right?

A Yes, sir.

Q Does your name figure in this at all?

A Yes, sir.

It is our booking number.

Q Your booking number?

A Yes, sir.

Q You mean that when Passaic calls in to Seatrain or Sealand or triple L, whoever it might be, that booking number is not given in Passaic's name?

A That's right, it's not. It's Dolphin's name.

[349] Q He says I want a container, booking number for Dolphin, is that how he does it?

A Right.

Q But Dolphin never gets that container?

A That's correct.

Q Because Dolphin has no equipment, has no interchange agreement?

A That's correct.

Q Now, when he gets back to the warehouse it is handled by, in this case, Passaic, right?

A Yes, sir.

Q Passaic's employees get the cargo in position and they stuff the container, right?

A Yes, sir.

Q Now, they put a seal on that container, is that right?

A Yes.

Q Whose seal is put on that container?

A Could be their own.

Q Well, a seal is a very special device, isn't it?

A Yes, it is.

Q What does it signify?

What does it—

A It gives—

Q (Continuing)—mean?

[350] A First of all, it gives a series of numbers and they are a series.

It could be 1077, 1078, 1079.

And if they have purchased the seals with the imprinting of their own name, they could have PTW, 1770, PTW—

Q Would it say ever DOL 1770?

A No, we have none.

Q You have no seals?

A No, sir.

Q Somebody looking at that container would see the Seatrain logo, they would look at the seal, the PTW seal?

A A seal, anyway.

Q Or a seal.

But what—that seal number is given by whom?

Where do they get the seals?

A Most carriers have these on a ring so that the next one in sequence comes off.

It is their ring.

If it is their series of seals, and they apply this to the doors on the trailer containers.

JUDGE JALETTE: These are the common carriers?

THE WITNESS: Yes, sir.

MR. EISENSTADT: I didn't hear that.

JUDGE JALETTE: Common carriers.

[351] Q The common carriers have the seals?

A Yes.

Anybody can buy seals.

You could buy some with your name on.

There are companies that are in business—

Q There are also seals without any designation on it except numbers?

A Just numbers, that's right. True.

Q Just numbers.

Now, the container is then transported down to the pier by whom?

A By the trucking company.

In this case, not necessarily, but it could be PTW that did the trucking.

They have a trucking division, public warehouse—

Q It's a subsidiary?

A It's a subsidiary, yes.

Q And they take it down to the pier, the bill of lading with the manifest?

A Not necessarily.

Q Not necessarily a manifest?

A They might just go in with a dock receipt for the purpose of lodging the equipment and—lodging the container and getting a receipt for it.

Q All right.
[352] That receipt is given to him?
A To the receivers on the pier.
Q All right.
But do the receivers on the pier sign anything?
A Yes.
Q Do they acknowledge receipt?
A Yes.
One copy is retained by the driver.
Q And that dock receipt signifies what, that they have obtained a container from Dolphin?
A Yes.
Q Not from PTW, but from Dolphin?
A That's right.

* * * *

[403] VICTOR SANTOS,

having been first duly sworn by Judge Jalette, was examined and testified as follows:

JUDGE JALETTE: Be seated, please.
Give your name and address to the reporter.
THE WITNESS: My name is Victor Santos.
I live in 247 Montclaire Avenue, Newark, New Jersey.

DIRECT EXAMINATION

BY MR. PORTNOY:

Q Mr. Santos, what is your occupation?
A My occupation is the regional managing of San Juan Freight Forwarders, Transportation Company.
Q And when were you first employed by San Juan?
A The year 1973, sir.
Q And where was your first place of employment?
A In Puerto Rico, sir.
Q And after you were first employed did you subsequently move to New York?
A That's correct, sir.
Q And about when did you move to New York?
A Early part of 1974.

Q And would you tell us what business San Juan is engaged in?
A San Juan Freight Forwarders is engaged in the NVO [404] sea business which is a non vessel operated carrier.
Q And where is the principal office of San Juan located?
A The headquarters office of San Juan Freight Forwarders are located in Carolina, Puerto Rico.
Q And does San Juan also have an office in New York?
A Yes, sir.
Q And that is located at 601 West 28th Street?
A That's correct, sir.
Q When you first came to the New York office, could you tell us what groups of individuals San Juan employed in New York?
A In New York at that time we employed personnel, three, which is clerical administration.
Q And any sales personnel there?
A When I moved to New York I became one of the—involved in sales also.
Q Now, could you describe how San Juan, prior to September 1, 1974, move containers, what functions it performed?
A Well—
JUDGE JALETTE: Before what date?
MR. PORTNOY: September 1, 1974.
A They were using the facilities of different carriers like TransAmerican Trailer Transport, TTT, [405] Sealand and in very few occasions Seatrain.
Q Okay.
Those are the ocean carriers.
And you utilized containers in your business, is that correct?
A Containers or trailers.
Q Okay.
Who stuffed those containers?
A We use the company stevedoring called Penn Industries.

Q Do you know whether Penn Industries had a union contract with any labor organization?

A Yes, sir.

Q With what labor organization?

MR. EISENSTADT: Objection.

JUDGE JALETTE: Overruled.

A The union labor organization that represents Penn Industries is ILA, offshore.

Q After the container was obtained by the carrier and it was stuffed by the employees of Penn Industries,—withdraw that.

What was the arrangement between San Juan and Penn Industries with respect to the stuffing of containers?

A Penn Industries will receive, sign for and load into containers or trailers all the merchandise shipped by shippers at different locations in the United States to [406] the terminal of San Juan Freight Forwarders.

* * * *

Q When the containers were stuffed at 601 West 28th Street, what happened to the containers afterwards?

A They were documented by San Juan Forwarders and moved by a common motor carrier to the facilities of the ocean carrier.

Q And what happened to them there?

A At the facilities of the ocean carrier they were put on the vessel to be transported to Puerto Rico.

[407] Q Now, before they were lifted aboard the vessel, were the trailers or the containers ever unstuffed by ILA labor and restuffed into another container.

A Yes, sir, they were.

Q What percentage of your trailers or containers were ever—were subjected to that unstuffing and restuffing?

A To the best of my knowledge, at least 80%.

Q Now—

MR. EISENSTADT: Pardon me, can we have a time frame for this?

Q During what period of time was this going on?

A This started from '73 to '74.

JUDGE JALETTE: Through '74?

THE WITNESS: Yes.

* * * *

[410] Q Now, you say that you have—now, did there come a time when you could not obtain any containers from MTM or TTT?

* * * *

[412] THE WITNESS: Yes, sir.

At the latest part of 1974 we began having problems acquiring the availability for containers for San Juan Freight Forwarders from MTM.

* * * *

Did you ever have a conversation with Mr. O'Brien concerning the availability of containers?

A Yes, sir, I did, many occasions.

Q In the latter part of December, 1974, January, 1975, did you have a conversation with Mr. O'Brien concerning the availability of containers?

A Yes, sir, I did.

Q Can you fix the date?

Can you tell us the date of that conversation or the first conversation in that regard?

A The early part of January, 1975, I was informed by Mr. O'Brien that we will no longer have the availability of bookings or trailers for San Juan Freight Forwarders.

Q Will you tell us whether or not you called Mr. O'Brien or he called you?

[413] A The beginning—I made the call, because we used to call for booking numbers.

Q Okay.

You made the call.

Okay.

Who did you call?

A I called Mr. O'Brien.

Q And what did you say to him and what did he say to you?

A I requested booking for five spaces on the next available vessel.

And he informed me that—at that time that we could have the bookings but not the trailers.

Q What did you say to him?

A I asked him to explain the reason why we were not made the containers available to us.

Q And what did he say?

A He said I will have to see Mr. Paul Semack.

Q Anything else said in this conversation?

A Yes, sir.

MR. EISENSTADT: Excuse me, "I will," meaning who will have to see him, Mr. O'Brien or the witness would have to see Semack?

THE WITNESS: I will have to, that Mr. Santos will have to see Mr. Semack.

[414] BY MR. PORTNOY:

Q Anything else said during the conversation?

A He also informed me that the LTL facilities of MTM were being transferred to the Port of Elizabeth, and that Mr. Semack will explain to me further.

Q And did you talk to Mr. Semack?

A Yes, sir.

I called—

Q Hold it.

Did he—was this in person or by telephone?

A By telephone.

Q And did he call you or did you call him?

A I called him.

Q And do you remember the approximate date of this phone call?

A It was around the 10th or the 12th of January.

Q All right.

And what did you say to Mr. Semack and what did he say to you?

A Well, I asked Mr. Semack why San Juan Freight Forwarders cannot get any more bookings.

And he told me that he was being fined by the ILA, and also that the LTL facilities or MTM were being transferred to Port Elizabeth, and that we should contact the management of PRMMI in order to get any equipment.

[415] Q Did—

MR. EISENSTADT: Excuse me.

Equipment—

THE WITNESS: What I mean by equipment is containers.

Q And was anything else said during this conversation, do you remember?

A Not that I remember, sir.

Q Okay.

A That I remember.

Q And did you attempt to contact PRMMI at Port Elizabeth and Mr. Semack had suggested?

A Yes, sir, I did.

Before I did contact PRMNI, I informed my boss, Mr. Juan Santos, of the events.

Then I did contact PRMMI facilities of Mr. Joel McGurr.

Q Do you know what his title is, if you can tell us?

A No. I don't know.

Except—I don't know exactly his title.

But I do know he was within the operation facilities.

Q Okay.

What did you say to Mr. McGurr and what did he say to you?

JUDGE JALETTE: How do you spell McGurr, do you know?

THE WITNESS: McGurr is spelled M-c-G-u-r-r.

[416] Q Will you tell us what you said—

A I asked Mr. McGurr if we could get any containers from PRMMI.

At this time he informed me that the only way that he could move our cargo will be in an LTL basis.

By this he meant, he said, that we will have to bring our containers to their LTL facilities in Port Elizabeth where they will be off-loaded by members of the ILA and loaded by members of the ILA into the PRMMI containers.

Q What does off-loaded mean?

A It means the cargo that was in our container will have to be taken off one container and put into another container.

MR. CARUSO: Your Honor, may I have a point of clarification.

When this witness uses the term "our container", is he referring to the ocean container or the trailer of a truck?

JUDGE JALETTE: Let me make sure I understand.

Did Mr. McGurr tell you that PRMMI would furnish a container to you provided after you loaded it you brought it to Port Elizabeth?

THE WITNESS: No, sir.

Mr. McGurr informed me that he will transport our cargo if we brought it in to Port Elizabeth in our containers, [417] there they will be off-loaded from our containers and put into their containers.

JUDGE JALETTE: But you didn't have any containers.

THE WITNESS: No, sir.

JUDGE JALETTE: Mr. McGurr—did he know you had none?

THE WITNESS: Yes, sir.

MR. EISENSTADT: Your Honor, I think we are back where we started.

He says from our containers into PRMMI containers.

Our containers, can we get a clarification of what our —what work—

JUDGE JALETTE: He didn't have any.

MR. EISENSTADT: What does "our containers"—

JUDGE JALETTE: He is just repeating what was said.

BY MR. PORTNOY:

Q Now, would you tell us, did Mr. McGurr explain to you how you were supposed to get containers?

A Yes, sir.

He said we are supposed to lease them from the outside.

Q From the outside.

And did you in fact lease containers from the outside?

A Yes, we did.

Q From whom?

A From I.W. Leasing Company in New Jersey.

[418] JUDGE JALETTE: What was the name of the company?

THE WITNESS: I.W. Leasing.

Q And could you tell us when you began leasing containers from I.W. Leasing Company?

A We started leasing containers from I.W. Leasing around the 27th of January, 1975.

Q And what did you do with those containers that were leased from I.W. Leasing?

A We brought—we load them with freight at our terminal and deliver them to LTL terminal in Port Elizabeth belonging to PRMMI.

Q What happened to them there?

A They were off-loaded by ILA members and loaded into PRMMI containers.

Q Were the containers that you obtained from I.W. Leasing ocean containers or some other containers?

A They were actually seaworthy containers.

MR. CARUSO: Sorry.

Could that be repeated, the answer?

JUDGE JALETTE: They were seaworthy containers.

MR. CARUSO: Seaworthy.

Thank you.

BY MR. PORTNOY:

Q And I may be repeating myself, I beg your Honor's indulgence.

[419] But, how long did you lease these containers from I.W. Leasing?

A We leased them from the latest part of January to the latest part of May, 1975.

Q Now, in the latter part of May, 1975, what happened then?

A Then we decided to start shipping out of Jacksonville, Florida.

* * * *

[420] A I inquired from Mr. Schulein the reason why we were not being furnished containers.

Q And what did he say?

A He said that the reason why was because they were being fined by the ILA for every container that was loaded at a pier terminal by the consolidators.

* * * *

[422] Q You testified before that you were involved in sales in New York?

A That's correct.

Q And will you tell us, who did you solicit?

A We solicited on prospective shippers to Puerto Rico.

Q How did you go about it?

A The way in which San Juan Freight Forwarders does it, we usually start it in Puerto Rico visiting the buyer, and he will request a routing via San Juan Freight Forwarders.

Q Did any ocean carrier help you to generate business from your customers?

A No, sir.

Q Okay.

* * * *

[428] Did you learn at that time or thereafter where the LTL cargo came from or it eminated from?

A Yes.

Q Could you tell us from what locations that cargo came?

A Well, it was explained to me that we will have to generate the cargo and we will have to go out and sell our services in order to obtain it.

[429] Q Yes, but until the point—let's go back.

I realize the question might have been a little broad.

Let's take the time of the orientation.

At that time did Mr. Juan Santos explain to you where the cargo had been coming from?

MR. PORTNOY: Objection.

A The same—

JUDGE JALETTE: Overruled.

MR. EISENSTADT: Go ahead.

A It will be the same answer, sir.

Q Go ahead.

A Because, you know, he explained to me that it was up to the—to us—to the sales people to generate the cargo from different shippers.

* * * *

Q Was that—according to the information that was conveyed to you was that—excuse me—was the cargo

being solicited in the U.S. as well as in Puerto Rico generated as you put it?

[430] A Solicited as you put it, sir, would be done in both places but mostly in Puerto Rico.

Q I see.

Where was it coming from in the U.S.?

A All over the states.

Q Could you give us some locations?

A Well, we had—we still have freight coming from Massachusetts, Chicago, Wisconsin, Ohio, New York, New Jersey, Connecticut, Maryland, South Carolina, North Carolina, Florida, Georgia, from all those points.

Q Now, cargo—let's restrict ourselves at this point to cargo coming—the cargo that eventually goes over the docks in the Port of New York.

A Yes, sir.

Q Where does that cargo—from which of those locations that you just mentioned or others that you might not have mentioned has cargo come that reached New York?

A It actually again comes from all over the places—it depends on the shipper, which way he chooses for his land move.

It could be—he can route it to New York or route it—now, at the present time the Baltimore Terminal receiving station or Jacksonville or Miami receiving station.

Q Let me go back over my question because I don't [431] think it was fully understood.

Cargo coming into New York could come from where?

JUDGE JALETTE: He's answered from all the states he mentioned before it may come to New York.

Q Could it come from Massachusetts?

A Yes, sir.

Q From Ohio?

A Yes, sir.

Q From Chicago?

A Yes, sir.

Q Now, how would that cargo come to you?

What form, would it come by motor carrier, in a container or what form would it come?

A By any motor carrier with the exception of Chicago, sir.

Q Would you explain what the exception is?

A The exception is the fact that we do have a receiving station in Chicago.

* * * *

[436] Q Now, you said a short while ago that some of the containers coming in were not full.

Where do these containers go?

A They were in our terminal to be finished—filling it up and then they were sent to the pier as if it came from the terminal in New York.

* * * *

[437] JUDGE JALETTE: So it is the Penn Industries that is doing your stuffing, as you described earlier?

THE WITNESS: Yes, sir.

* * * *

[439] Q How did the LTL cargo that was loaded into containers at the premises which you described, how did it get to the—to the Erie Lackawanna building?

A By motor carrier.

* * * *

[443] Q Mr. Santos, you mentioned that you were able to get booking numbers from the ocean carriers, I believe Mr. Obrien, and from others.

When you pay those booking numbers, that entitled you to obtain a container, is that right?

A That's correct.

Q Did San Juan send somebody down to get those containers?

A My answer to this will have to be—actually San Juan would have to call a motor carrier because the fact is a motor carrier doesn't know San Juan needs a truck.

But the motor carrier was—in fact, designated by the ocean carriers because they were the ones that had [444] the interchange contract with them, not us.

* * * *

CROSS EXAMINATION

[446] Q In the course of your direct testimony, Mr. Santos, you stated that in the 1973-74 period there had been a rehandling of containers at piers—taking out of one, putting into another.

Do you still stand by that testimony?

A Yes.

Q When did this begin, as far as you can recall?

A I have no knowledge exactly when it began.

Q Within your own experience?

A Okay.

Within my own experience—the fact that I was working for San Juan Freight Forwarders, and I was informed of most of the happenings and events of the company, I was obviously aware of the fact that they were stripped in New York even though I was in Puerto Rico.

Q When it arrived—when a container arrived in Puerto Rico was there any manifestation of this?

[447] A Yes, sir, on the bill of lading that was given to us by the steamship company in Puerto Rico stated whether the container had been transferred or not.

Q When did you first see such a notation or marking on a bill of lading?

A This would be in the year 1973 when I was in Puerto Rico.

Q Can you give us an approximate month?

A October, November, December.

Q Of 1973?

A Yes, sir.

Q Did this continue when you came to New York, New Jersey area?

A Yes, sir.

Q All right.

And it persisted, is that right?

A That's correct.

* * * *

[449] Q My question is if you know it was going to be restuffed, why did it go down to the pier in containers?

A We—we are paying the company to do the work of loading our containers.

These people are paid for all the weight that moves in our platform—in our platform.

We had the facilities, so we fill up the container and send it to the pier.

The reason why we didn't take it down as an LTL is because the functions of San Juan Freight Forwarders is to consolidate.

* * * *

[454] Q (By Mr. Eisenstadt) Mr. Santos, what are the functions of a consolidator as far as San Juan is concerned within your knowledge?

A The—our function would be to receive freight from different shippers from different points and to consolidate it or merge it into one container and ship as one shipment.

Q Now, you testified that you hired Penn Industries to perform that function, correct?

A San Juan Freight Forwarders did.

Q San Juan Freight Forwarders, I didn't mean you, personally.

* * * *

[457] Q In addition to the stuffing of the containers what functions do you perform for your customers for handling the documentation with respect to the movement of the LTL merchandise?

A San Juan Freight Forwarders as an NVO gives the customers in the first place which we are very proud of, sir, as the personalized service, we attend to their needs in person.

Second, we give them a choice of handling the way of payment, to be either paid by the consignee or the consignor.

Third, we deal with banks in Puerto Rico.

We accept the sight drafts and letters of credit.

And also we perform—we can give them exactly where the freight is at within 30 minutes.

Q Okay.

As far as the handling of documentation involving that goods, what do you do?

A I beg your pardon, sir?

Q The paper work involved, what paper work do you perform?

A We issue the shipper a bill of lading.

[458] Q Do you make arrangements for the delivery of the LTL to your premises or Penn's premises here in New York?

A No, sir.

Q Who handles that?

A That's either done by the shipper or by—I guess—I suppose the salesman from the motor carrier that goes over there and solicits that freight.

* * * *

[472] Q During what period of time was San Juan dealing with MTM?

A MTM?

Q Yes.

A San Juan dealt with MTM from the fall of 1974.

Q Until?

A In other words, we acquired trailers from MTM I would say September, October, November, December of 1974.

Q And how long did that continue?

A It continued—it lasted until the first part of January.

Q Of 1975?

A That's correct, sir.

[473] Q And after that point you were sent to PRMMI, is that right?

A That's correct.

Q At that point in time you were told—is that correct—that all LTL would be handled by PRMMI, is that right?

A That's correct.

* * * *

[476] Q You mentioned there was a salesman in the—in your offices on 28th, correct?

A Yes, sir.

Q You do some selling yourself, is that right?
A Yes, sir.
Q How do you do the selling, by phone or in writing?
A By all means, sir, phone, writing, personal contact.

* * * *

[478] Q The sales that are resolicited by purchasers of your services that are solicited from your headquarters, are they directed at persons within the metropolitan New York-New Jersey area?
A Not necessarily, sir.
Q Where else would they be directed or are they directed?
A Can you give me the original question first?
Q Where do you look for customers?
Where do you solicit customers?
A Well, all over the United States and Puerto Rico, sir.
Q But including within the 50 miles of the Port of New York?
A That's including the port, sir.
Q Are these basically manufacturers?
A Not necessarily, sir.
Anybody that moves or ships or sails in the Puerto Rico market.
JUDGE JALETTE: Manufacturers, jobbers, wholesalers?
THE WITNESS: That's correct, sir, anybody.

* * * *

[485] MR. CARUSO: I ask that these documents be marked as Respondent's NYSA Exhibit 2.
JUDGE JALETTE: What do they purport to be?
MR. CARUSO: These purport to be six bills of lading on Sealand bills of lading forms indicating shipments by San Juan Freight Forwarders, Inc. on board Sealand vessels from the Port of New York to the Port of San Juan, Puerto Rico.
These shipments took place at various times in calendar years 1973 and 1974.
JUDGE JALETTE: Well, let's mark them Respondent NYSA 2A through F.

* * * *

[486] Q (By Mr. Caruso) I show you Respondent NYSA Exhibit 2A through F.
I ask you whether you recognize them.
A Can you show me the dates on here, sir?
(Mr. Caruso indicates)
A Right.
Q I am just asking you whether you recognize the documents.
A Just as a Sealand bill of lading showing the original carriers—
Q Do you recognize them?
A Yes, I do.
Q You do?
A Yes.
Q Would you briefly identify them?
A Identify them as being from San Juan Freight Forwarders.
JUDGE JALETTE: What are they?
Q What are they?
A Ocean bill of ladings.
Q Are these documents prepared by San Juan Freight Forwarders?
MR. PORTNOY: Objection.
[487] What is the relevance of this?
MR. CARUSO: It goes to our deception defense, your Honor.
JUDGE JALETTE: Make your offer of proof.
Mr. CARUSO: I offer these exhibits into evidence, your Honor.
The witness if asked to identify then would identify them as bills of lading for shipments by San Juan Freight Forwarders aboard Sealand vessels during 1973 and 1974.
The witness would also testify that these documents represent all of the containers moved by San Juan Freight Forwarders on board Sealand vessels during calendar years 1973 and 1974.
The witness would also testify that these bills of lading were prepared by San Juan Freight Forwarders, Inc.
And the witness would further testify that on each bill of lading as reflected on each of the bills of lading,

the address or the origin of the container would be indicated at—as Chicago, Illinois.

The witness would further testify that the containers to which these bills of lading relate were either fully loaded at San Juan Freight Forwarders Facility in New York or partially loaded at that facility in New York before [488] being trucked to the Sealand pier for loading on board ship.

From this we would then show that San Juan Freight Forwarders was engaging in deceptive devices indicating that the origin of these shipments was outside the 50-mile radius of Port of New York in order to avoid certain contractual provisions that were in effect in the Port of New York in the collective bargaining agreements between New York Shipping Association and International Longshoremen's Association.

JUDGE JALETTE: Your objection to your examination is sustained and respondent Exhibits 2A through F are rejected.

They may go into the rejected exhibit file.

* * * *

[490] Q Yet you also testified that this first occurred in October 1973, almost—more than six months after this orientation period.

Can you explain how Mr. Santos knew of the stuffing and stripping if it had not been done already?

A I believe my answer was during the year 1973.

Q When were you first made aware of the stuffing and stripping that was occurring at the piers in the port of New York?

A The fact is, you know, when you are employed in a company you go through a training program any company will do that.

My position in Puerto Rico was as a salesman.

Later in 1973 I started being trained to be—to become—to come to New York.

Late 1973 when I was informed of the problems that I would have to cope with in New York—

Q When were you informed?

A First part of 1974.

But by that time I was aware of the fact that in 1973, latter part of 1973, we were being rehandled at the [491] pier.

Q And in—prior to September 1, 1974 I take it that all of the San Juan shipments were being—that were destined for Puerto Rico were being moved through the Port of New York, is that correct?

A That's correct.

Q And this would be true whether the cargo within these shipments originated in Chicago or Baltimore or Ohio or where-have you?

A At that time they were all moving out of the Port of New York, yes, sir.

Q If a container that was fully or partially loaded at your facility within the area of the Port of New York, namely on the west side of Manhattan, West 28th Street, if that container was trucked to the pier, would the documentation that accompanied that trailer indicate San Juan's address was 601 West 28th Street?

MR. PORTNOY: Objection.

JUDGE JALETTE: Sustained.

MR. CARUSO: May I make an offer?

JUDGE JALETTE: Yes.

MR. CARUSO: I would offer that if I were permitted to answer that question and a series of questions thereafter, that this witness would testify that it was the practice of San Juan Freight Forwarders to indicate that all [492] shipments moved by San Juan Freight Forwarders regardless of the ocean carrier that was being used whether it was Sealand, Seatrain or TTT that all of these shipments would have been shown to have originated outside the 50-mile radius of the Port of New York, namely at San Juan's facility in Chicago, Illinois.

JUDGE JALETTE: Your offer of proof is rejected.

Q Beginning in October 1973 you testified that the shipments of San Juan were being stuffed and stripped at the piers, is that right?

MR. PORTNOY: Objection.

He's misquoted the witness' testimony.

JUDGE JALETTE: Restate the question.

Q You testified beginning October of 1973 the shipments of San Juan Freight Forwarders were being stuffed and stripped at pier facilities by ILA longshoremen, is that right?

A Yes, sir.

Q What pier facilities are we referring to?

A To the pier facilities of the ones I had knowledge of was the Staten Island facilities of the Port of New York.

* * * *

[496] Q Were you told by Mr. Santos of any conversations he had with TTT officials in—relating to the period May 1, 1974 to September 1, 1974?

MR. PORTNOY: Objection.

JUDGE JALETTE: Sustained.

Q On September 1, 1974 is it a fact that the Puerto Rican Maritime Shipping Authority purchased all of the vessels and equipment of the then carriers in the Puerto Rican trade, namely Seatrain, Sealand and TTT?

A It is a known fact, sir.

Q And from that date until at least March 1975 the only carrier—the only ocean carrier in the New York to Puerto Rican trade was PRMSA, is that correct?

A Yes, sir.

Q Were you aware that PRMSA filed a tariff beginning with the initiation of its service in the New York Puerto Rican trade which contained some of the provisions of the collective bargaining agreement between New York Shipping Association and International Longshoremen's Association?

MR. PORTNOY: Objection.

JUDGE JALETTE: Sustained.

* * * *

[515] JUAN SANTOS

having been first duly sworn, was examined and testified [516] as follows:

* * * *

DIRECT EXAMINATION

* * * *

Q What—Mr. Santos, are you an officer in San Juan Freight Forwarding, Inc.?

A Yes.

Q What office do you hold?

A President of San Juan Freight Forwarders.

Q When was San Juan Freight Forwarders formed?

A San Juan Freight Forwarders was formed in 1972, May 1972.

* * * *

[522] Q In the 1972-1973 period which Mr. Victor Santos picks up, did San Juan Freight Forwarding obtain its containers independently or from ocean carriers—its containers meaning containers which it had stuffed?

A From ocean carriers.

Q Could you identify those ocean carriers?

A Yes.

Transamerican Trailer Transport, called TTT, giving us the empty containers.

Q All of them?

A Yes, sir.

Q When PRMSA—are you aware that there came a point when PRMSA was formed to handle the Puerto Rican trade, ocean-going trade?

A Correct.

Q Did PRMSA ever furnish containers to your firm?

A No.

Q Who did, what entity did?

A MTM or PRMMI.

Q You are aware of the relationship between PRMSA and MTM and PRMMI?

A Yes, sir, they were the management group of PRMSA.

Q Do I gather then that MTM and PRMMI furnished containers to San Juan?

A That's correct.

GENERAL COUNSEL'S EXHIBIT NO. 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD
REGION 2

Cases Nos. 2-CC-1364, 2-CE-75, 2-CC-1365

INTERNATIONAL LONGSHOREMEN'S ASSOCIATON
and NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by the undersigned that:

1. Respondents ILA and NYSA admit the allegations contained in paragraphs 1(a) through (c), 2(a) through (e), 5, 14, 17, 18, 23(b) through (e), 24, and 25(c) of the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated March 10, 1976 (hereinafter Complaint) and the Order Amending Complaint dated June 23, 1977.

2.(a) Puerto Rico Maritime Shipping Authority, hereinafter called PRMSA, is, and has been at all times material herein, an instrumentality duly organized under, and existing by virtue of the laws of the Commonwealth of Puerto Rico.

(b) At all times material herein, PRMSA has maintained an office and place of business at 1 World Trade Center, in the City and State of New York and in the Commonwealth of Puerto Rico, where it has at all times material herein owned certain facilities and vessels which

carried cargo in commerce between states of the United States and the Commonwealth of Puerto Rico.

(c) During the year 1974, which period is representative of its annual operations generally, PRMSA, in the course and conduct of its operation, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from its operations referred to above in subparagraph 2(b).

(d) At all times material herein PRMSA has been a member of NYSA.

(e) At all times material herein PRMSA has been a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6) and (7) and 8(b)(4)(B) and 8(e) of the Act.

3.(a) Maritime Transportation Management, Inc., of Puerto Rico, hereinafter called MTM is, and has been at all times material herein, a corporation with its principal office and place of busines at 358 St. Marks Place, Staten Island, in the City and State of New York, and at Pier C, New Port Development area, Puerto Rico, where it is, and has at all times material herein continuously managed and operated vessels owned by PRMSA in the Puerto Rican maritime trade pursuant to a contract between them.

(b) During the year 1974, which period is representative of its annual operations generally, MTM, in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from its operations in interestate commerce directly from the State of New York to the Commonwealth of Puerto Rico.

(c) At all times material herein, MTM has been a member of NYSA.

4.(a) Transamerican Trailer Transport, Inc., hereinafter called TTT, is, and has been at all times material herein, a corporation with its principal office and place of business at 358 St. Marks Place, Staten Island, in the City and State of New York, and at Pier C, New Port Development area, Puerto Rico Nueyo, in the Commonwealth of Puerto Rico where it is and has been at all times material herein, continuously engaged in business as a cargo carrier in commerce between States of the United States and foreign countries.

(b) During the year 1974, which period is representative of its annual operations generally, TTT, in the course and conduct of its operations, derived gross revenues therefrom in excess of $50,000, for the transportation of cargo directly in interstate and foreign commerce.

(c) At all times material herein, TTT has been a member of NYSA.

5.(a) Puerto Rico Marine Management, Inc., hereinafter called PRMMI, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware.

(b) At all times material herein, PRMMI has maintained its principal office and place of business at Fleet & Corbin Streets, P.O. Box 1910, in the City of Elizabeth, and State of New Jersey, where it is, and has at all times material herein, continuously managed and operated vessels owned by PRMSA in the Puerto Rican maritime trade pursuant to a contract between them.

(c) During the year 1974, which period is representative of its annual operations generally, PRMMI, in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from its operations in interstate commerce directly from the State of New York to the Commonwealth of Puerto Rico.

5.(d) At all times material herein, PRMMI has been a member of NYSA.

6.(a) Dolphin is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Massachusetts.

(b) At all times material herein, Dolphin has maintained its principal office and place of business at One Mayflower Drive, in the City of Hanover, and State of Massachusetts, where it is, and has been at all times material herein, continuously engaged in providing services for its customers as a non-vessel operating common carrier, hereinafter NVO, utilizing containers for effecting shipments thereof by ocean going vessels, and classified as such by the Federal Maritime Commission, hereinafter FMC.

(c) During the year 1974, which period is representative of its annual operations generally, Dolphin, in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from shipments in interstate commerce directly from various states of the United States to the Commonwealth of Puerto Rico.

7.(a) San Juan is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the Commonwealth of Puerto Rico.

(b) At all times material herein, San Juan has maintained its principal office and place of business at 601 West 28th Street, in the City and State of New York, where it is, and has been at all times material herein, continuously engaged in providing services for its customers as an NVO utilizing containers from effecting shipments thereof by ocean going vessels and classified as such by the FMC.

(c) During the year 1974, which period is representative of its annual operations generally, San Juan, in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from shipments in interstate commerce directly from various states of the United States to the Commonwealth of Puerto Rico.

8.(a) Penn Industries, Incorporated, hereinafter called Penn, is and has been at all times material herein, a corporation duly organized under, and existing by virtue of the laws of the State of New York.

(b) At all times material herein, Penn has maintained its principal office and place of business at 136 East 57th Street, in the City and State of New York, where it is, and has been at all times material herein, continuously engaged in the business of leading and discharging (unloading) containers for nonvessel common carriers.

(c) During the year 1974, which period is representative of its annual operations generally, Penn, in the course and conduct of its operations within the State of New York, derived gross revenues therefrom in excess of $100,000 for services which were performed pursuant to contract and arrangements with, and as agent for various interstate common carriers including, *inter alia*,

San Juan, which operated between and among various states of the United States and the Commonwealth of Puerto Rico.

9. MTM, PRMMI, TTT, San Juan, Dolphin and Penn are, and have been at all times material herein, persons and employers engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (2), (6) and (7) and Section 8(e) and Section 8(b)(4) of the Act.

10. Annexed hereto and made a part of this Stipulation are letters from the Fund to TTT described in paragraph 24(a) of the Complaint, which letters have been marked Exhibits A through E. They shall be admitted in evidence.

11. Annexed hereto and made a part of this Stipulation are minutes of a meeting of the Contract Board dated July 10, 1975 relating to the fines and assessments described in paragraphs 24(a) and (b) of the Complaint, which minutes have been marked Exhibit F. It shall be admitted in evidence.

12. Annexed hereto and made a part of this Stipulation is a letter from MTM to Dolphin dated February 21, 1975 described in paragraph 25(d) of the Complaint, which has been marked Exhibit G. It shall be admitted in evidence.

13. Annexed hereto and made a part of this Stipulation is an invoice from Dolphin dated August 29, 1975 described in paragraph 25(e) of the Complaint, which invoice has been marked Exhibit H. It shall be admitted in evidence.

14. Annexed hereto and made a part of this Stipulation is an agreement betwen ILA and CONASA dated June 21, 1974, (hereinafter referred to as the yellow agreement) which agreement has been marked Exhibit I. It shall be admitted in evidence.

15. Annexed hereto and made a part of this Stipulation is an agreement between ILA and CONASA dated May 30, 1975 (hereinafter referred to as the blue agreement) described in paragraph 20 of the Complaint, which agreement has been marked Exhibit J. It shall be admitted in evidence.

16. Annexed hereto and made a part of this Stipulation are the Findings of Fact and Conclusions of Law

dated September 18, 1975 and an Order dated September 18, 1975 in 75 Civ. 4027, by Judge MacMahon of the United States District Court for the Southern District of New York, which are marked Exhibits K and L respectively. They shall be admitted in evidence.

17. Annexed hereto and made a part of this Stipulation is a decision issued by Charles E. Morgan, Administrative Law Judge of the Federal Maritime Commission dated October 9, 1975, which is marked Exhibit M. It shall be admitted in evidence.

18. Annexed hereto and made a part of this Stipulation is an agreement betwen Penn Industries, Inc. and Local 976, ILA dated January 1, 1973, which is marked Exhibit N. It shall be admitted in evidence.

This Stipulation shall be part of the record in the hearing in this case and findings may be made on the basis of this Stipulation and the facts herein set forth. However, this Stipulation is entered into without prejudice to the right of any party to object at the hearing to the admission in evidence of any document or record referred to in this Stipulation on any ground other than authenticity and of any fact on the grounds of irrelevancy or immateriality and without prejudice to the right of any party hereto to introduce additional evidence material to the issues in this case whether or not such issues are dealt with or otherwise touched upon by the Stipulation.

New York, New York

.....	.....
Date	Counsel for the General Counsel National Labor Relations Board
.....	.....
Date	Counsel for New York Shipping Association, Inc.
.....	.....
Date	International Longshoremen's Association
.....	.....
Date	Counsel for Dolphin Forwarding, Inc. and San Juan Freight Forwarders, Inc.

EXHIBIT A

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

August 27, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, New York 10301

Attention: Mr. Peter A. Holzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distribution station by a Fund Investigator:

Container Number	Place	Date
RTTZ 790204	Port Motor Lines 125 Enterprise Ave. So. Secaucus, N.J.	August 5, 1974
RTTZ 790534	West Transfer Co. Pier 79, N. R. New York, N.Y.	August 12, 1974
RTTZ 790273	Colella Bros. Tkg. 645 E. 13th St., New York, N.Y.	August 12, 1974
RTTZ 790173	Passaic Terminal Warehouse 600 Washington Avenue Carlstadt, New Jersey	August 12, 1974
RTTZ 709763	San Juan Forwarding 601 W. 28th St., New York, N.Y.	August 14, 1974
RTTZ 790670	Colella Bros. 645 E. 13th St., New York, N.Y.	August 19, 1974

In accordance with the CONASA-ILA Container Rules, and the "Enforcement of Rules on Containers", it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty

Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $6,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

EXHIBIT B

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

September 10, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, New York 10301

Attention: Mr. Peter A. Holzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distrbiution station by a Fund Investigator:

Container Number	Location	Date
RTTZ 301096	Passaic Terminal Warehouse 600 Washington Ave. Carlstadt, N.J.	August 23, 1974
RTTZ 705091	International Container Express 86 Oak St. E. Rutherford, N.J.	August 23, 1974
RTTZ 790155	Passaic Terminal Warehouse 600 Washington St. Carlstadt, N.J.	August 26, 1974
TTTZ 281168	Burgmeyer Trucking 10 Water St., Jersey City, N.J.	August 28, 1974
TTTZ 281044	" " " "	August 28, 1974
TTTZ 281047	Passaic Terminal Whse. 600 Washington Ave. Carlstadt, N.J.	August 28, 1974

In accordance with the CONASA-ILA Container Rules, and the "Enforcement of Rules on Containers", it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty

Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $6,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

EXHIBIT C

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

September 23, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, New York 10301

Attention: Mr. Peter A. Holzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distribution station by a Fund Investigator:

Container No.	Location	Date
TTTZ 281557	World Warehouse Bldg. #3, Bklyn. Navy Yard Brooklyn, New York	September 6, 1974
TTTZ 281290	Farrara Bros. 525 West 24th St. New York, New York	September 9, 1974
TTTZ 281252	World Warehouse Bldg. #3, Bklyn, Navy Yard Brooklyn, New York	September 10, 1974
RTTZ 790126	" "	September 10, 1974
TTTZ 281465	Coella Bros. 645 East 13th Street New York, New York	September 12, 1974
RTTZ 281116	Passaic Terminal Whse. 600 Washington Avenue Carlstadt, New Jersey	September 13, 1974
RTTZ 790376	" "	September 13, 1974
TTTZ 790136	Ferrara Bros. Tkg. 525 W. 24th St., New York, N.Y.	September 16, 1974
RTTZ 790063	San Juan Forwarding 601 W. 28th St., New York, N.Y.	September 18, 1974
RTTZ 790397	World Warehouse Bldg. 3, Bklyn Navy Yard Brooklyn, N.Y.	September 19, 1974

In accordance with the CONASA-ILA Container Rules, and the "Enforcement of Rules on Containers", it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $10,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

EXHIBIT D

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

October 2, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, New York 10301

Attention: Mr. Peter A. Holzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distribution station by a Fund Investigator:

Container No.	Location	Date
RTTZ 790533	Passaic Terminal Warehouse 600 Washington Ave. Carlstadt, N.J.	September 25, 1974
RTTZ 790401	" "	September 25, 1974
TTTZ 790198	Ferrara Bros. 525 West 24th Street New York, N.Y.	September 30, 1974
RTTZ 790348	Passaic Terminal Warehouse 600 Washington Ave. Carlstadt, N.J.	September 30, 1974
RTTZ 790008	" "	September 30, 1974

In accordance with the CONASA-ILA Container Rules, and the "Enforcement of Rules on Containers", it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $5,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours,

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

T
gbe

EXHIBIT E

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

October 17, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, N.Y. 10301

Attention: Mr. Peter A. Holtzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distribution station by a Fund Investigator:

Container No.	Location	Date
RTTZ 790284	Dyna Trans—Shed 192 Port Newark, New Jersey	Oct. 2, 1974
RTTZ 281486	Passaic Term. Whse. 600 Washington Ave. Carlstadt, N.J.	Oct. 2, 1974
RTTZ 790376	" " "	Oct. 2, 1974
RTTZ 790052	" " "	Oct. 2, 1974
RTTZ 790218	Facility Warehouse 70-72 Laight Street New York, New York	Oct. 4, 1974
RTTZ 790167	Ferrara Bros. Tkg. 525 W. 24th Street New York, New York	Oct. 10, 1974

In accordance with the CONASA-ILA Container Rules, it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $6,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours,

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

cc: Mr. Paul Semack

EXHIBIT F

MEMORANDUM TO ALL MEMBERS OF
THE NYSA-ILA CONTRACT BOARD:

RE: Transamerican Trailer
Transport, Inc. Hearing
July 10, 1975

On Thursday, July 10, 1975, the undersigned met with Mr. Paul Semack, Senior Vice President, Transamerican Trailer Transport, Inc., to consider alleged violations of the Rules on Containers.

At the start of the meeting, Mr. Semack handed over two checks—one issued by Transamerican Trailer Transport, Inc. in the amount of $10,000., and another issued by Maritime Transportation Management, Inc. of Puerto Rico in the amount of $4,000. covering certain containers deemed to be in VIOLATION at the previous meeting held January 23, 1975.

The containers covered are as follows:

(Transamerican Trailer Transport Inc. Check #9555- in amount of $10,000)

RTTZ 790173	RTTZ 281116
RTTZ 709763	RTTZ 790376
RTTZ 705091	RTTZ 790533
RTTZ 790155	RTTZ 790401
TTTZ 281047	RTTZ 790348

(Maritime Transportation Management, Inc. of Puerto Rico—in amount of $4,000)

RTTZ 790008	RTTZ 790376
RTTZ 281486	RTTZ 790052

At the January 23, 1975 meeting several containers were placed in the HOLD category pending receipt of warehouse receipts. Mr. Nicholas informed Mr. Semack that since the 30 day extension has long expired, these containers would have to be considered violations.

At this point Mr. Semack stated that he knew nothing about a "30 day extension".

Mr. Nicholas then proceeded to advise Mr. Semack that with respect to any items deemed to be in violation of the Rules, a company is given days in which to appeal

such rulings. However, Mr. Semack was further informed that if TTT were unable to submit any required or additional information in the 30 days, the finding of a Violation would stand since the Board had decided that no more than one 30 days extension would be given in which to submit missing documentation.

Mr. Nicholas then reviewed the following items held from the January 23, 1975 and August 28, 1974 meetings (see Attachment "A":

TTTZ 281557—HOLD)	Must submit warehouse
TTTZ 281252—HOLD)	receipts within 30
RTTZ 790126—HOLD)	days
RTTZ 790397—HOLD)	
RTTZ 790284—VIOLATION	
RTTZ 790244—HOLD)	
RTTZ 207911—HOLD)	If TTT can submit documentation
*RTTZ 790057—HOLD)	proving these were Northbound
RTTZ 790057—HOLD)	shipments—No Violation;
RTTZ 790057—HOLD)	if Southbound—Violation
RTTZ 790349—HOLD)	
RTTZ 790007—HOLD)	
RTTZ 790273—NO VIOLATION	
RTTZ 790670—NO VIOLATION	
TTTZ 281465—NO VIOLATION	
TTTZ 790136—NO VIOLATION	
TTTZ 790198—VIOLATION	
RTTZ 790167—VIOLATION	

With regard to the three violations noted against Containers Nos. RTTZ 790284, TTTZ 790198 and RTTZ 790167, there is no further appeal available to the carrier.

With regard to the 41 containers scheduled for review today (see Attachment "B") Mr. Semack advised that he was unable, at this time, to submit any documentation thereon.

Mr. Nicholas advised Mr. Semack that he would be granted 30 days in which to supply the necessary documentation. If, no documentation is supplied by August 11, 1975, these containers are to be considered in Violation of the Rules and the Container Royalty Fund will expect payment on all open items.

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* Three (3) separate movements.

NYSA-ILA
CONTRACT BOARD
80 Broad Street
New York, N. Y. 10004

ATTACHMENT "A"

TRANSAMERICAN TRAILER TRANSPORT

At the January 23, 1975 meeting with Mr. Semack, the following items were placed in the "Hold" category pending warehouse receipts:

TTTZ 281557 World Whse. observed 9/6/74—our letter 9/23/74
Matsushita Electric—Northbound
TTTZ 281252 World Whse. observed 9/10/74—our letter 9/23/74
RTTZ 790126 World Whse. observed 9/10/74—our letter 9/23/74
RTTZ 790397 World Whse. observed 9/19/74—our letter 9/23/74
RTTZ 790284 Dyna Trans—observed 10/2/74—our letter 10/17/74
Shed #192 (*Question of Manufacturer's Label which was referred to the full Board*)

Items held open from the August 28, 1974 meeting, reviewed at the January 23, 1975 meeting, referred to the full Board Re Manufacturer's Label. However, Mr. Nicholas was requested to Furnish his recommendation.

RTTZ 790244 Dyna Trans (Domel) observed 12/10/73—our letter 2/5/74
RTTZ 207911 Dyna Trans Co. observed 1/22/74—our letter 3/8/74
RTTZ 790057 Dyna Trans Co. observed 3/20/74—our letter 4/22/74
RTTZ 790057 Dyna Trans Co. observed 4/9/74—our letter 4/22/74
RTTZ 790057 Dyna Trans Co. observed 5/14/74—our letter 6/14/74
RTTZ 790349 Dyna Trans Co. observed 5/31/74—our letter 6/14/74
RTTZ 790007 Dyna Trans Co. observed 6/20/74—our letter 6/28/74

The following items were determined to be *VIOLATIONS REMIT*. At the January 23, 1975 meeting, the Committee concurred that they would discuss the matter further and advise Mr. Semack of their decision at an early date. However, no liquidated damages would be assessed as to past violations.

RTTZ 790273-Colella Bros.-observed 8/12/74-our letter 8/27/74
RTTZ 790670-Colella Bros.-observed 8/19/74-our letter 8/27/74
RTTZ 281465-Colella Bros.-observed 9/12/74-our letter 9/23-74
TTTZ 790136-Colella Bros.-observed 9/16/74-our letter 9/23/74
TTTZ 790198-Ferrara Bros.-observed 9/39/74-our letter 10/2/74
RTTZ 790167-Ferrara Bros.-observed 10/10/74-our letter 10/17/74

EXHIBIT G

MARITIME TRANSPORTATION MANAGEMENT, INC. OF PUERTO RICO

358 St. Marks Place, Staten Island, New York 10301
Telephone: (212) 447-2600 • Cable: TOTEM

February 21, 1975

Mr. Richard Lee
Dolphin Freight Forwarding
P. O. Box 76
Hanover, Massachusetts

RE: Trailer RTTZ 790052 EKH Voy. 78-7 B/L 3175
" RTTZ 790348 PDL Voy. 79-9 B/L 3212
" TTTZ 281486 EKH Voy. 79-1 B/L 3175
" RTTZ 790376 EKH Voy. 78-7 B/L 3176

RE: Tariff FMC F No. 1 of Puerto Rico Maritime Shipping Authority

Original Page 123—Tariff Rule E of Rule 440

Dear Mr. Lee:

On January 23, 1975, meeting was held in the offices of the New York Shipping Association, Inc. with the Contract Administration Officer and other members of the NYSA/ILA Royalty Fund as concerns violations of the NYSA/ILA Rules on Containers as articulated in the current ILA Labor Contact in effect in the Port of New York.

Through its Fund Investigators, subject trailers were discovered to be in violation of the Rules on Containers. As such, MTM was assessed liquidated damages of $1000 per trailer.

Accordingly, I have enclosed our invoice MTM 141-75 billing Dolphin Forwarding the amount of these liqui-

dated damages in accordance with our tariff in effect at the time.

Very truly yours,
/s/ Paul Semack
PAUL SEMACK

PS:ph

Encl.

cc: Mr. E. Sheppard—Morgan, Lewis, Bockius
Mr. R. Guevada—Director of Operations—PRMSA
Mr. R. Lugo—President MTM
Mr. M. Massaro—Revenue Auditor

MARITIME TRANSPORTATION MANAGEMENT, INC. OF PUERTO RICO
358 St. Marks Place, Staten Island, New York 10301
Telephone: (212) 447-2600

—INVOICE—

No. MTM-141-75

Date: 2/21/75

Dolphin Forwarding
P.O. Box 76
Hanover, Mass.

	Amount	Total
Violation of Conasa-ILA rules on containers, as per attached Puerto Rican Maritime Shipping Authority Tariff FMC F No. 1		
Four trailer @ $1,000.00 per trailer		
TRL # RTTZ 790052 @ $1,000.00	$1,000.00	
RTTZ 790348 @ $1,000.00	1,000.00	
RTTZ 281486 @ $1,000.00	1,000.00	
RTTZ 790376 @ $1,000.00	1,000.00	
TOTAL		$4,000.00
PAY THIS AMOUNT		$4,000.00

TRANSAMERICAN TRAILER TRANSPORT, INC.
JANUARY 23, 1975

List Nos.	Container Numbers	Location	Our Letter		Comments
26	RTTZ 790348	Passaic Term.	Whse.	10/2/74	VIOLATION
29	RTTZ 281486	Passaic Term.	Whse.	10/17/74	VIOLATION —(Dolphin)
30	RTTZ 790376	" "	"	10/17/74	VIOLATION —(Dolphin)
31	RTTZ 790052	" "	"	10/17/74	VIOLATION —(Dolphin)

MARITIME TRANSPORTATION MANAGEMENT, INC. OF PUERTO RICO

358 St. Marks Place, Staten Island, New York 10301
Telephone: (212) 447-2600)

INVOICE

No. MTM 595

Date: 8/29/75

Dolphin Forwarding
P. O. Box 76
Hanover, Mass.

To charge you for container violations per rule 3(c) of PRMSA Tariff No. 1 FMC-F No. 1 Page 124 at the rate of $1,000.00 per container as follows:

Container No.	Was observed at the loading platform of:	On (Date)		
RTTZ 790179	Passaic Term. Whse.	10/16/74		
RTTZ 790364	600 Washington Ave.	10/21/74		
RTTZ 790662	Carlstadt, N.J.	10/21/74		
RTTZ 200463	"	11/13/74		
RTTZ 790446	"	11/18/74		
RTTZ 790444	"	12/10/74		
TTTZ 281088	"	11/20/74		
7 containers @ $1,000.00 per container =			$7,000.00	$7,000.00

Please Remit

[FILE Exec. Sec. 0]
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD—REGION 2

Cases Nos. 2-CC-1364, 2-CC-1365, 2-CE-75

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION & NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

STIPULATION

WHEREAS, International Longshoremen's Association, (herein called ILA), New York Shipping Association, Inc., (herein called NYSA), Dolphin Forwarding, Inc. and San Juan Freight Forwarders, Inc. (herein called the Charging Parties), and the General Counsel of the National Labor Relations Board, (herein called the General Counsel), being all of the parties to this proceeding, desire to petition the National Labor Relations Board, in order to effectuate the purposes of the National Labor Relations Act, 29 U.S.C. Section 151, *et seq.*, (herein called the Act), and to avoid all unnecessary costs and delay, to exercise its powers under Section 102.50 of the Rules and Regulations of the Board, Series 8, as amended, (herein called the Rules), to transfer this proceeding to the Board; and

WHEREAS, pursuant to a Consolidated Complaint and Notice of Hearing and an Order Amending Complaint, a hearing was held, the testimony of certain wit-

nesses was taken, and exhibits were introduced into evidence, and other testimony, offers of proof and exhibits were proffered by the ILA and NYSA and other exhibits by the General Counsel, which were rejected by the Administrative Law Judge and placed in the rejected exhibits file.

NOW, THEREFORE, IT HEREBY IS STIPULATED by and between the parties herein as follows:

1. The parties hereby acknowledge receipt and due service of the Charges, the Consolidated Complaint, the Order Amending Complaint, the Notice of Hearing, the Order Extending Time to Answer, ILA's and NYSA's Answers and Amended Answers, and Orders Rescheduling Hearing.

2. The parties agree that the following documents constitute the entire record in these cases:

(a) The Charges;

(b) The Consolidated Complaint;

(c) The Amended Complaint;

(d) The Answers;

(e) The Amended Answers

(f) The Transcript of Testimony

(g) The General Counsel's Exhibits, ILA's Exhibits, NYSA's Exhibits and the Rejected Exhibits;

(h) General Counsel's Motion to Strike Defenses, ILA's Opposition thereto, NYSA's Reply to General Counsel's Motion, and General Counsel's Reply to the Opposition;

(i) NYSA's Cross-Motion to Dismiss the Complaint;

(j) General Counsel's Opposition and Reply Papers concerning said Motion;

(k) The Administrative Law Judge's Order granting the Motion to Strike Defenses and Denying the Cross-Motion to Dismiss the Complaint;

(l) ILA's and NYSA's Motion for Special Permission to Appeal the Judge's Order Striking Defenses and General Counsel's Reply thereto and the Board's Order denying Special Permission;

(m) ILA's and NYSA's Motion to Offer Written Testimony and General Counsel's papers Opposing said Motion;

(n) The Judge's Order Denying said Motion;

(o) ILA's and NYSA's Application to take Depositions and Demand for Production of Documents;

(p) The Denial of said Application;

(q) ILA's and NYSA's Request to the General Counsel Appealing the Denial of the aforementioned Applications and

(r) The Judge's Orders for continuation in the hearing.

3. The parties agree that they waive the making of findings of fact and conclusions of law by an Administrative Law Judge and the issuance of an Administrative Law Judge's Decision and Recommended Order. They desire to submit this case directly to the Board for findings of fact, rulings on Exceptions to Rulings on motions, objections and offers of proof, conclusions of law and the issuance of a Decision and Order. They further request the Board to set dates for the filing of briefs and reply briefs herein by all parties pursuant to § 102.46 of the Board's Rules.

4. Approval of this Stipulation by the Administrative Law Judge shall constitute an Order transferring the within proceeding to the Board.

By: /s/ Irwin M. Portnoy
IRWIN M. PORTNOY
Counsel for the General Counsel
National Labor Relations Board
Region 2

December 7, 1977

(Date)

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
By: /s/ Illegible
ILLEGIBLE

Dec. 5, 1977

(Date)

NEW YORK SHIPPING ASSOCIATION, INC.
By: /s/ Illegible
ILLEGIBLE

Dec. 5, 1977

(Date)

DOLPHIN FORWARDING, INC.
By: /s/ Thos. Dleonway
THOS. DLEONWAY

Wed. 7 December, 1977

(Date)

SAN JUAN FREIGHT FORWARDERS, INC.
By: /s/ Thos. Dleonway
THOS. DLEONWAY

Wed. 7 December, 1977

(Date)

APPROVED:

/s/ Henry L. Jalette,
HENRY L. JALETTE,
Administrative Law Judge
National Labor Relations Board

December 22, 1977

(Date)

[FILE Judges Div.]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

Case Nos. 2-CC-1364, 2-CC-1365, 2-CE-75

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION & NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

ORDER

The stipulation of the parties transferring this proceeding to the Board and waiving findings of fact and conclusions of law and the issuance of a decision and recommended order by the undersigned is hereby approved, and

IT IS HEREBY ORDERED that the proceeding be transferred to the Board.

/s/ Henry L. Jalette
HENRY L. JALETTE
Administrative Law Judge

Dated: December 22, 1977

New York, N.Y.
[FILE Sec. D]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Cases 2-CC-1364, 2-CC-1365, 2-CE-75

[FILE IN FORMAL FILE . .D.]

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION & NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

ORDER APPROVING STIPULATION

and

TRANSFERRING PROCEEDING TO THE BOARD

A hearing was held on July 11 and Sept. 19, 20 and 21, 1977, in the above-entitled proceeding before Administrative Law Judge Henry L. Jalette of the National Labor Relations Board, at which time certain exhibits were received into evidence. Thereafter, on December 7, 1977, International Longshoremen's Association; New York Shipping Association, Inc.; Dolphin Forwarding, Inc.; San Juan Freight Forwarders, Inc.; and the General Counsel of the National Labor Relations Board entered into a Stipulation. The parties agreed that the Stipulation and the documents attached thereto consti-

tute the entire record in the cases. They waived the making of findings of fact and conclusions of law and the issuance of a decision by an Administrative Law Judge and desire to submit the cases directly to the Board for findings of fact, rulings on Exceptions to Rulings on motions, objections and offers of proof, conclusions of law and the issuance of a Decision and Order. The parties requested that the Board set dates for the filing of briefs and reply briefs. On December 22, 1977, the Administrative Law Judge approved the Stipulation and by Order of same date, referred the proceeding to the Board.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the Stipulation be, and it hereby is, approved and made a part of the record herein.

IT IS HEREBY ORDERED that the above-entitled proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D.C., for the purpose of making findings of fact and conclusions of law and for the issuance of a Decision and Order.

The parties herein may file briefs with the Board in Washington, D.C., on or before January 25, 1978, and may file reply briefs on or before February 8, 1978.

Dated, Washington, D.C., January 4, 1978.

By direction of the Board:

Associate Executive Secretary

GEORGE A. LEET

THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

Cases Nos. 2-CC-1364, 2-CC-1365, 2-CE-75

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

ORDER

On March 10, 1976, the General Counsel issued the consolidated complaint in the above-captioned case alleging that International Longshoremen's Association (herein referred to as Respondent ILA), and New York Shipping Association, Inc. (hereinafter referred to as Respondent NYSA), had violated Section 8(e) of the Act and that Respondent ILA had violated Section 8(b)(4)(i) and (ii)(B) of the Act by maintaining and enforcing a collective-bargaining agreement containing certain rules on containers against Dolphin Forwarding, Inc. (hereinafter referred to as Dolphin), the Charging Party in Cases Nos. 2-CC-1364 and 2-CE-75 and against San Juan Freight Forwarders, Inc. (hereinafter referred to as San Juan), the Charging Party in Case No. 2-CC-1365. Thereafter, Respondent ILA and Respondent NYSA timely filed answers and amended answers. The amended answers contained certain affirmative defenses and General Counsel has moved to strike such affirmative answers.[1]

[1] All parties have filed briefs in support of their positions. Respondent ILA has requested deferral of ruling on General Counsel's motion until the hearing or pending submission of further argument. The request is denied. The briefs previously filed adequately cover the issues and have been duly considered.

A. The Affirmative Defenses of Respondent NYSA

Respondent's first defense is that the dispute underlying this proceeding is a primary dispute between it and its members on the one hand and Respondent ILA on the other. Its second defense is that the contract provisions here complained of are valid work preservation rules.

In *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc.)*, 221 NLRB 956 (1975), hereinafter referred to as the *Conex* case, the Board rejected similar defenses. Respondent NYSA asserts, however, that the instant case presents different factual issues which require a hearing of evidence on these affirmative defenses. As General Counsel notes, the assertion is contrary to the deposition of counsel in a Notice of Motion to stay proceedings in *Sidney Danielson* v. *International Longshoremen's Association and New York Shipping Association, Inc.*, U.S. D.C., Southern District of New York, Civil Action No. 75-Civ-4027, wherein the Regional Director of the Board, pursuant to the charges in this case, petitioned for an injunction pursuant to Section 10(1) of the Act. In that deposition, counsel averred that "the issues in the instant action are identical to the issues raised and fully litigated in [*Conex*]. The parties to this proceeding, except for the charging parties, are identical to those in [*Conex*]."

In *Conex*, the Board found that the Rules on containers were not valid work preservation rules and implicitly rejected the defense that the underlying dispute was a primary one betwen Respondent NYSA and Respondent ILA. In doing so, the Board defined the work in controversy as the LCL and LTC container work performed by the consolidators in that case at their own off-pier premises. As such work had traditionally been performed by consolidators at their own off-pier premises, the Board rejected the work preservation defense. Its holding was affirmed in *Longshoremen* v. *N.L.R.B.*, 537 F.2d 706 (2nd Cir., 1976).

General Counsel asserts in support of his motion that the consolidators in this case, Dolphin and San Juan, have traditionally performed the work here in question at off-pier premises, and Exhibits 3 and 4 submitted by Respondent NYSA in its reply to the motion to strike defenses support the assertion. Significantly, Respondent NYSA has not averred in its defenses of work preservation that Respondent ILA has historically and traditionally performed the ICL and LTC work performed by Dolphin and San Juan. Thus, it appears that Respondent NYSA by its first and second defenses is seeking to relitigate the same issue which the Board decided in *Conex*. That such is the case is evident from Respondent NYSA's assertion that a Supreme Court decision in *Northeast Marine Terminal Company* v. *Caputo*, Docket 76-444 (June 17, 1977) places in doubt the continuing validity of *Conex*. However, in *International Longshoremen's Association, AFL-CIO, et al.* (*Associated Transport, Inc., et al.*), 231 No. 64, a majority of the Board rejected a reading of *Caputo* which would, in effect, reverse *Conex*. To the contrary, the majority adverted to its words in *Conex* that "it is clear that the on-pier stripping and stuffing work performed by Longshoremen as an incident of loading and unloading ships does not embrace the work [of stuffing and stripping containers] traditionally performed by Consolidated and Twin at their own off-pier premises." Thus, it is clear that *Conex* is viable precedent for this case and that while "the facts of each case in the area are paramount," [2] the facts that require consideration relate to the work traditionally performed by the consolidators off the pier. As noted earlier, Respondent NYSA has not averred that Respondent ILA has traditionally performed the work which Dolphin and San Juan was performing which became the subject matter of the controversy in the instant case.

For the foregoing reasons, I find merit to General Counsel's motion to strike the first and second defenses and they are hereby stricken.

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[2] *International Longshoremen's Association, AFL-CIO, et al.* (Associated *Transport, Inc., et al.*), *supra*, slip opinion, page 8.

2. Third defense

The third defense asserted by Respondent NYSA in its amended answer is that the charge against it is time barred under Section 10(b) of the Act.

The charge against Respondent NYSA was filed by Dolphin on May 6, 1975. While the Rules on Containers "here alleged to be violative of Section 8(e) of the Act were entered into more than 6 months before the filing of Dolphin's charge, the complaint alleges, and the answer admits, that on January 23, 1975, Respondent NYSA, in implementation of the Rules on Containers, by admitting agents, levied fines upon Maritime Transportation Management, Inc., of Puerto Rico and Transamerican Trailer Transport, Inc., by reason of their having furnished containers to Dolphin and San Juan. Such conduct would constitute an entering into a contract within the meaning of Section 8(e) of the Act. As it occurred less than 6 months before the filing of the charge in 2-CE-75, the affirmative defense of Section 10(b) of the Act is without merit and is hereby striken.[3]

3. Fourth Defense

Respondent NYSA's fourth defense is the allegation that Dolphin and San Juan have not obtained permits assertedly required by provisions of the Interstate Commerce Act to engage in the consolidation of freight of LTL and LCL cargo and have therefore not lawfully acquired the work which is the subject of dispute herein. This defense is stricken as legally insufficient. Dolphin's and San Juan's qualifications to perform the work in question under the provisions of the Interstate Commerce Act is a matter extraneous to the application and enforcement of the Act. The Board, in a proceeding of this type, must determine only whether Dolphin and San Juan are either employers or persons within the meaning of Sections 2(1) and (2) and 8(e) of the Act.

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[3] Respondent NYSA has also moved to dismiss the complaint on the grounds that it is barred by Section 10(b) of the Act and it is moot. The motion to dismiss is denied.

3. The affirmative defenses of Respondent ILA

1. First, Second, Third, and Sixth defenses

These defenses of Respondent ILA are essentially the same as the first, second, third and fourth defenses of Respondent NYSA and they are hereby stricken for the reasons given above with respect to Respondent NYSA's first, second, third, and fourth defenses.

2. Fourth defense

The fourth defense asserts laches on the part of Dolphin and San Juan in filing charges. The defense is legally insufficient and is hereby stricken.

3. Fifth defense

This defense avers that impairment of the Rules on Containers and reaffirmation of the holding in *Conex* will adversely effect 25,000 longshoremen and pensioners and their families and create chaos in the industry. This defense raises matters of policy not properly addressed to the Board and is legally insufficient.

It is hereby stricken.

/s/ Henry L. Jalette
HENRY L. JALETTE
Administrative Law Judge

Dated: September 12, 1977

FILE Judges Div.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

FILE IN
FORMAL FILE
D P

Cases Nos. 2-CC-1364, 2-CC-1365, 2-CE-75

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

ORDER

Pursuant to agreement of the parties at hearing herein, Respondents New York Shipping Association and International Longshoremen's Association have submitted affidavits setting forth the evidence they wished to adduce in defense of the allegations of the complaint herein. Such affidavits and attached exhibits have been duly considered and they are hereby rejected as the matters contained therein relate to defenses which are deemed to be legally insufficient in light of the decision of the National Labor Relations Board in *International Longshoremen's Association, AFL-CIO, (Consolidated Express, Inc., and Twin Express, Inc.)* 221 NLRB 956. The

affidavits and exhibits attached thereto shall be placed in the rejected exhibit file.

As Respondent's affidavits and exhibits have been rejected, in accordance with the agreement of the parties, the hearing scheduled for November 7, 1977, is hereby cancelled and the hearing is closed. The parties are given until December 5, 1977, to file briefs.

/s/ Henry L. Jalette
HENRY L. JALETTE
Administrative Law Judge

Dated: November 2, 1977

EXHIBIT No. 1

10 DEC 74

SUBJ: Mem for Record

FROM: Russ McHugh OPS MGR-DOLPHIN

Received call from Paul Semack from "Transamerican" asking for Dick Lee. Replied that he was in PR for week. Said he had list of containers given him by ILA which were domiciled in Carlstadt. Told him that I didn't know if I was the one to help him but would take the info. and would pass it on to RWL. Gave me the following list: 790533, 790401, 790348, 790008, 301096, 790155, 281047, 281116, 790173, 281436, 790052, 790376. Trl 301096 he then said to omit as was flatbed y didn't apply to us. He then stated that listed containers were liable to $1000 for being stuffed within 50 mile zone and that they were going to come after us legally to collect this amount as per the tariff. Also, that they would try to collect this amount for any containers prior to OCT 1 as we had been showing Hanover as origin point and deceiving TTT. He then asked if Hanover was outside of 50 mile zone and i said no. He then stated all loads moving out of the Boston area was subject to being loaded by ILA. Told him I didn't know why because no one servicing PR left out of Boston. Finally stated that he was x not releasing any equipment to us, not accepting anything from us, nor would he release anything to anyone else for us. Told me to load our trailers and take them to Sealand to have them stripped, and restuffed and pay the specified charge. Stated that our freight was much too expensive for him to handle at a $1000 fine per trailer.

Called RWL and explained. Discussed matters and he said he was in PR and couldn't do anything till he got home, but to get in touch with, first, Bob W., and then Chas. Haslup at Fmc. (N.B.) Cemack had called at 9:15, was now about 9:40. Talked with Bob W. who said to apply for injunction. Regarding freight under

load, said to either have Fram book load for themselves, consigned to us in PR, or call Semack back and explain that was OK load and would he accept. Re frt under load, Bob said to let SL strip and restuff, and to move frt out of Boston by SL.

Called Haslup, who was out of town til 18th. Spoke to Don Brunner who was not quite as familiar with case. Brunner asked general questions, after I explained the situation, like: did I know of anyone else who was affected by this practice, how many loads had we moved by TTT, ST, SL, how many loads per week, etc. Said he would check into situation and get back. When I asked if he was familiar with Conex-Twin case and should we go same route thru NLRB, he said prob. would be best.

Bob W. called saying that perhaps we should try to lodge the PTW load, TRL RTTZ 790444 to see if it would be accepted or rejected, and see if we could also draw an MT on one of the open bookings that we have. Idea was that we would then have legal basis for court case.

TLX'd RWL who said that shouldn't go this route as issue was already at head and we had received word from officer of TTT that they were refusing our freight. This was enough segue RWL. I stated that they had not actually refused anything, at this point was a threat (promise, maybe?). RWL said no. When asked if I should advise Tom Murphy, RWL said yes, advise him, but he wasn't guy for the job, although his NJ cohorts could probably do the work, although it would be "veddy (sic) expensive".

Called Tom and explained to him situation, then explained to him the Conex case (he didn't seem familiar with it) then had to explain to him the two divisions of PRMSA and the tariff as he seemed to want to take action against TTT group only. He asked for rundown of PRMSA, PRMM, & TMT asking for info as to whether they were public agencies or private groups and where they were organized. This info requested by TLX to RWL.

Prior to calling Tom had tried to reach Semack but he was unavailable. After call with Tom, Semack called back. Explained to him that Fram load TRL 298944 was on way and would he accept it. Evaded question and said that someone in our company had made bad decision long time ago. Then asked for list of numbers of TRLS in our system. Gave him 790444 and 790820 at Seaboard. His response was that we should not load them. When pressed again about the Frm load, his response was misleading: My query, "Well what are you gonna do about that load on the way in, you gonna accept it?" His reply; "Accept it? Shit, I'll probably strip and stuff it." With that we hung up, him knowing that we were sending that load in.

Spoke to X Brunner again. He said the reason for our problems was a meeting held last week between the 2 management companies of PRMSA: the discussion centered around the fact(?) that TTT was not adhering to ILA rules. Conclusion was that TMT (TTT) would now adhere to those rules. He also sed that best route was to go via Conex route thru NLRB as his agency had no injunctive powers. Did wish that he was private lawyer because felt it was a strong case, and he would win.

Circa noon, But O. called y said he had received a TWX from Rebalado saying that they were to cancel all Dolphin bookings and issue no new ones. Told Bud that we had been found. But wanted to know exactly what had Semack told me y I related it to him. He said he wanted to be prepared y know what was up when he spoke to Semack. But said he would check things and wouldn't let go of this. I thanked him and said if necessary we would protect him with TTT as Bud was ignorant of our NJ operation and no recriminations should befall him due to our violations and fines TTT may have to pay because Bud booked out trls.

MEMO FOR RECORD

11 DEC 74

FROM: Russ McHugh

Recollections from my first phone conversation with Semack—Semack said that Dolphin had been deceiving TTT/EMTM by showing Hanover, MA as our address. Apparently TTT construing this as origin point; perhaps this info was given to him as a result of meeting last week with both management companies.

Point to consider on this if any legal action ensues is that TTT B/L only has spaces to show Shipper, Consignee and Party to be notified. Unlike the old ST & SL B/L, there is no space to show the origin point. This is not to say that we would not continue to show Hanover as we did in the ST days, but that alternative was not even available to us due to the construction of the B/L.

Circa 12:30, But O. called HA and informed him that he had to cancel all bookings for DFI and was not allowed to issue any new ones. But stated to HA that he did not know of any DFI loads stuffed in NJ and HA replied "How would you, all you gave us was a booking assuming we were moving out of our New England territory." But is apparently quite concerned that TTT officials may think he deeply involved with DFI and could cost him a job, let alone the account.

MEMO FOR RECORD

FROM: Russ McHugh

13 DEC 74

Circa 11:30 AM go call from Bud O. who was returning my earlier call to him. Purpose of my call was to see if he had heard anything new on DFI. But said all he knew was that he had done as Rebalado had in-

structed him, i.e., to cancel all advance bookings for DFI. What Bud didn't know was what was the status of prior bookings that had not been used that he had issued to us. But said only way to find that out was to check with O'Brien.

Called G. O'Brien and asked about status of bookings. Gery said that we had none. I asked him if I could get a booking from him for a load. He said no, we could not get a booking and that I should talk to Semack. Said Semack was out and would not be back until 2:30 to 3:00 today.

Called Semack. Intention of my call was to see if I could get a booking for a 40' Open top to handle Marr load. If his response was a visceral "no", I was prepared to explain that it would not be LTL but TL movement of steel pipes loaded at customer's dock, that customer had called ysdy looking for us to move in requested equipment, that only TTT could supply the equipment, that would be loaded outside of 50 mile Zone of NY (i.e., Boston) and on what tariff basis was his company denying us the equipment.

Semack not in, left my number for him to call back. At this time is 4:00 and probably will not call back.

Bob W. says can't get any bookings from Sealand people he deals with, wait until Monday. Sealand, if true to form, will deny us booking on moves ex: Boston because is their opinion that freight containerized within 50 miles of Boston is subject to ILA stuffing, even though they don't service the port—that is, even though PRMSA doesn't service the port. Semack had expressed same conviction during our first chat on Tuesday.

Personal opinion: Semack or whomever he would refer me to would have said that they are denying us trailer because (1) we are loading within 50 miles of port of Boston, and (2) even though this not consolidated LTL Shipments, DFI is not beneficial owner of cargo.

Because of SL group position and Semack's earlier and similarly stated conviction, seems that we not going to be able to handle this Marr load without subjecting ourselves to $1000 fine or stripping and restuffing charge.

588

589

IMPORTANT: READ YOUR INSTRUCTION PAGE

SEA-LAND SERVICE, INC.

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

SEA-LAND SERVICE DOCK RECEIPT COPY

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ONLY

ATE	SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE	ORIGINATING CARRIER	SEA-LAND BOOKING NO.
1 2 74	150095 Seal#LifChigo 01260/01261	Lifschultz Fast Frt	I-05534

ESSEL / VOYAGE NO.	CONTAINERS LOADED				COMM. CODE	FNH
	BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT		21836
S. S. NEW ORLEANS 145	150095	M0				FOR OFFICE USE ONLY

CONSIGNED TO: (NAME AND COMPLETE ADDRESS)	STORE DOOR DELIVERY (NAME-STREET-ADDRESS-CITY)	SHIPPER: (NAME AND COMPLETE ADDRESS)
San Nuan Freight Forwarders Inc Carolina, Puerto Rico	☒ NOT REQUIRED — UNLESS CHECKED, DELIVERY WILL BE PERFORMED ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS	SanJuan Freight Inc. %Lifschultz Fast Freight Inc. 1300 So. Dearborn Avenue Chicago, Ill.

END ARRIVAL NOTICE TO

ROUTING	PORT OF LOADING	PORT OF DISCHARGE AND/OR TERMINAL	OTHER	ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-
EA-LAND SERVICE, INC.	Pt. Elizabeth	☒ SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ ARECIBO (LTL ONLY)		

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES Type of Packages - Full Description of Merchandise - Measurements Where Required	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: D OR F	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
51	Pcs Refrigerators, Household NOS	16249	1700	D			24000.00	50	850 00
447	pcs Boxes Iron or Steel	2066	125	D			15000.00	90	112 50
488	pcs Lighting Fixtures	1568	65	D			4300.00	86	55 90
10	Ctns Auto Parts	531	7	D			1000.00	76	5 32
66	Ctns Magazines	1327	37	D			3760.00	76	28 12
6	Ctns Printed Matter	95	2	D			350.00	76	1 52
1068	pcsttl	21836	1936						

Freight Charges Payable At Destination

RECEIVED PUERTO RICAN DIV.

INSURANCE OPTION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)	TOTALS	21836	1936	TOTAL OCEAN FREIGHT 1053 36

INSURANCE COVERAGE ☐ MARINE RISKS ☐ ALL RISKS ☐ REEFER CLAUSE ☐ WAR SR & CC — VALUE $

If Export Declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for export control and customs purposes. (FMC Appl.#30) The exporter declares that all information contained in the Export Declaration Section of this Bill of Lading is true and correct and that he is aware of the penalties provided by law for making false or misleading statements.

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ Per _____

23	PICK-UP	LBS.@	
22	LANDING	LBS.@	
22	LANDING	1936 CU. FT. @	22 42 59
16	DELIVERY	LBS.@	
21	INSURANCE ON $	@	
18	DOCUMENTATION		
56	OTHER B/C 2%		31 60
		TOTAL CHARGES	1137 55

SHIPPER, BY: _____ DATE

CARRIER, BY: _____ SIGNATURE _____ DATE

DISTRIBUTION PAGE

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE

SEA1160319 Bill No. of USA-ACE 15

ORIGINATING CARRIER: Charles Lauter Inc.

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ONLY: 013-00707 BOOKING 31026

HOUSTON 174

HOUSTON 174

CONTAINERS LOADED

VOYAGE NO.	SEAL NO.	NO. OF PIECES	WEIGHT
150045	03514/5		

COMM. CODE | FMN

FOR OFFICE USE ONLY

530935

CONSIGNED TO (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders, Inc.
% Office No: 2000
[illegible], Puerto Rico

Port: Elizabeth

SERVICE, INC.

STORE DOOR DELIVERY (WHERE AUTHORIZED BY CITY): NOT REQUIRED | UNLESS CHECKED, DELIVERY WILL BE PERFORMED

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

PORT OF DISCHARGE AND/OR TERMINAL: OCEAN | FORCE | INLAND (CARRIER USE ONLY) | OTHER

SHIPPED (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders, Inc.
% Lifschultz Fast Freight Inc.
1200 South Dearborn Avenue
Chicago, Ill.

ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES (Seal Packages • Full Description of Merchandise • Measurements Where Required)	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: DUNS	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
2	/L Freight All Kinds	29637	1750					TL	
	TOTALS	29637	1750						

FREIGHT BILL

RECEIVED
PUERTO RICAN DIV.
MAY 29 1973
Trailer Interchanged Freight Rel Counter
SEAL
BY

TOTAL OCEAN FREIGHT 12375

33	PICK-UP LBS.		
22	LANDING LBS.	T/L	3900
22	LANDING CU. FT.		
16	DELIVERY LBS.		
21	INSURANCE ON $		
18	DOCUMENTATION		
30	OTHER		

TOTAL CHARGES 1,774 15

OPTIONS PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

VALUE

ALL RISKS | FREEZER | WAR SR & CC

[illegible] dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed value of the property is hereby specifically stated by the shipper to be not exceeding ____ Per

CARRIER, BY

DATE | SIGNATURE | DATE

R.N.S.A. #28
Rejected

Bof 1724
G.O.

ISSUING TERMINAL: ELIZABETH | FREIGHT BILL NO.: 901-530935

5-24-73 1/C 1174

1/1 | MAY 23 1973

150045

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2-1-7 X

72 | 72 | 73

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F 15940 | 1750

29637

SEALAND SERVICE, INC.

Item 150 NMC F 21 provides that all LTL shipments 3000 lbs and [illegible] less than 700 CF must be accorded delivery service in Puerto Rico at the rates provided for such service. Exceptions--Household Goods, temp control cargo and pieces exceeding 15 feet.

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SEA-LAND SERVICE, INC.

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SEA-LAND SERVICE DOCK RECEIPT COPY

B R NO S-1170

3

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ONLY

R-NYSA #2C Rejected

TE	SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE	ORIGINATING CARRIER	SEA-LAND BOOKING NO.
1 4 74	150248	Lifschultz Fast Freight	

SSEL VOYAGE NO.

CHICAGO V44

CONTAINERS LOADED

BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT
150248			

COMM. CODE

FNH 20468

FOR OFFICE USE ONLY

[illegible]3132

NSIGNED TO: (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders, Inc.
P O Box 2099
Carolina, Puerto Rico

ARRIVAL
CE TO

STORE DOOR DELIVERY NAME-STREET-ADDRESS-CITY: ☒ NOT REQUIRED — UNLESS CHECKED, DELIVERY WILL BE PERFORMED

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

SHIPPER: (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders, Inc.
% Lifschultz Fast Freight Inc.
28 No. Franklin
Chicago, Ill.

TING LAND SERVICE, INC.

PORT OF LOADING: Ft. Elizabeth

PORT OF DISCHARGE AND/OR TERMINAL: ☐ SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ ARECIBO (LTL ONLY) OTHER

ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES Type of Packages - Full Description of Merchandise - Measurements Where Required	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: DOR F	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
25	Ctns Shoes	800	46	D			1500.00	76	34 96
80	Ctns Auto Pts	1562	43	D			3500.00	76	32 68
56	Ctns Cloth or Fabrics	940	80	D			3890.00	59	47 20
190	Ctns Paper Articles NOS	4693	178	D			5700.00	41	72 98
173	Ctns Furniture, office & Parts	10511	1500	D			10000.00	56	840 00
10	Drums Liquid Soap	1750	150	D			1500.00	246	43 05
4	Ctns Elec Cable	212	2	D			75.00	95	1 90
	TOTALS	20468	1999						

PUERTO RICAN DIV.
JAN 4 1974
Trailer Interchanged Freight Net Bounded

ANCE OPTION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

TOTAL OCEAN FREIGHT 1072 77

IRANCE ERAGE ☐ MARINE RISKS ☐ ALL RISKS ☐ REEFER CLAUSE ☐ WAR SR & CC VALUE $

23	PICK-UP	LBS.@		
22	LANDING 1750	LBS.@	5.4	95
22	LANDING 1671	CU. FT. @	2.2	36 76
16	DELIVERY	LBS.@		
21	INSURANCE ON $	@		
18	DOCUMENTATION			
29	OTHER 3% surcharge			32 18
(50)	TOTAL CHARGES			[illegible]

ort Declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for control and customs purposes. (FMC Appl. #30) The exporter declares that all information contained in the Export Declaration of this Bill of Lading is true and correct and that he is aware of the penalties provided by law for making false or misleading ents.

he rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. ed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ Per _____

ER, BY: SIGNATURE V. Perez DATE

CARRIER, BY: SIGNATURE DATE

IMPORTANT: READ YOUR INSTRUCTION PAGE

SEA-LAND SERVICE, INC.

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

SEA-LAND SERVICE DOCK RECEIPT COPY D/R NO. 51056

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ON

DATE	SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE	ORIGINATING CARRIER	SEA-LAND BOOKING NO.
12 13 73	150249 Seal No. LifChi01254/55	Lifschultz F.Frt	11-00523

VESSEL: BOSTON V108

VOYAGE NO.:

CONTAINERS LOADED

BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT
150249			

COMM. CODE:

FNH:

FOR OFFICE USE ONLY

R-NYSA-2D Rejected

CONSIGNED TO: (NAME AND COMPLETE ADDRESS)
S.J. F. F. Inc.
Road 887 Hn 0.8
Carolina, Puerto Rico

SEND ARRIVAL NOTICE TO

STORE DOOR DELIVERY NAME-STREET-ADDRESS-CITY: [X] NOT REQUIRED — UNLESS CHECKED, DELIVERY WILL BE PERFORMED

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

SHIPPER: (NAME AND COMPLETE ADDRESS)
San Juan Freight Forwarders, Inc.
1300 So. Dearboron Avenue
Chicago, Ill.

ROUTING: SEA-LAND SERVICE, INC.

PORT OF LOADING: Pt. Elizabeth

PORT OF DISCHARGE AND/OR TERMINAL: [X] SAN JUAN [ ] PONCE [ ] MAYAGUEZ [ ] ARECIBO (LTL ONLY) OTHER 981

ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES Type of Packages - Full Description of Merchandise - Measurements Where Required	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: D OR F	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
370 Pcs	Auto Air contitioning Parts	16397	1800	D			4099.00	56 M	$1008.0
	Freight Charges ppayable at destinatoj								
							s/c	3%	30.2
	TOTALS	16397	1800						

INSURANCE OPTION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

TOTAL OCEAN FREIGHT $1038.2

INSURANCE COVERAGE: [ ] MARINE RISKS [ ] ALL RISKS [ ] REEFER CLAUSE [ ] WAR SR & CC VALUE $

23	PICK-UP	LBS.@		-
22	LANDING	LBS.@		-
22	LANDING	1800 CU. FT. @	022	39.6
16	DELIVERY	LBS.@		-
21	INSURANCE ON $	@		-
18	DOCUMENTATION			3.0
30	OTHER			

If Export Declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for export control and customs purposes. (FMC Appl.#30) The exporter declares that all information contained in the Export Declaration Section of this Bill of Lading is true and correct and that he is aware of the penalties provided by law for making false or misleading statements.

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ Per _____

SHIPPER, BY: SIGNATURE DATE

CARRIER, BY: SIGNATURE DATE

READ YOUR INSTRUCTION PAGE

SHORT FORM THROUGH BILL OF LADING

NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL

D1038

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ONLY

ISSUING TERMINAL: ELIZABETH 201-33100

FREIGHT BILL #

7/20/74

SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE

ORIGINATING CARRIER

SEA-LAND BOOKING NO.

VOYAGE NO.: 130

VESSEL: BOSTON

CONTAINERS LOADED

BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT
107173		567	27,926

COMM. CODE

PIER

FOR OFFICE USE ONLY: 331009

9-30-74 E0-1305 JUL 31 5

281

107173

10 | 11 | 8 9 10

72

72

73 1.50

951 | 64.78

10590 | 1602

27926

CONTAINERS UNLOADED ☑ | UNDER SHADE ☐ | IN GRADE ☐

CONSIGNEE (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders Inc.
Carolina, Puerto Rico

STORE DOOR DELIVERY (NOT REQUIRED) XX

UNLESS CHECKED, DELIVERY WILL BE PERFORMED

SHIPPER (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders Inc.
1300 Dearborn Avenue
Chicago, Illinois

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

SEA-LAND SERVICE, INC.

POINT OF LOADING: CLK

POINT OF DISCHARGE AND/OR TERMINAL: XX SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ OTHER (LIVE ONLY)

ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES (Type of Packages - Full Description of Merchandise - Measurements Where Required)	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: DOM./F.	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
10	ctns Cloth or Fabric NOS	720	38	D				21	30 78
6	ctns Elect Appl Equip NOS	325	1.2	D				90	10 80
7	ctns Frocks	84	15	D				68	10 20
4	ctn Bags Paper Lined	764	13	D				2.37	17 77
1	ctn Stamping	316	10	D				22	2 20
5	ctns Cleaner o/t Fiber	187	9	D				1.62	3 03
509	Pen Paper & Paper Products NOS	25530	1505	D				42	632 10
567	TOTAL PIECES	27926	1602						

TRAILER SEAU 107173
Seal # 0000

RECEIVED

	TOTAL OCEAN FREIGHT		714 33
23	PICK-UP LBS.#		
22	LANDING 951 LBS.#	06	57
22	LANDING 1.50 CU. FT. #	2.5	39 50
16	DELIVERY LBS.#		
21	INSURANCE ON $		
18	DOCUMENTATION		100
31	OTHER	11%	72 58
	TOTAL CHARGES		83798

INSURANCE COVERAGE: ☐ MARINE RISKS ☐ ALL RISKS ☐ DEFENSE CLAUSE ☐ WAR SR & CC $

VALUATION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

If export declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for export control and customs purposes. (Title 13 Appl. 30) The operator declares that all information contained in this export declaration is true and correct and that he is aware of the penalties provided by law for making false or misleading statements.

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding $ per

SEA-LAND SERVICE, INC. property.

CARRIER, BY: ELIZABETH PIERS

DATE — SIGNATURE — DATE

SEA-LAND SERVICE, INC

R.N.I/SA 25
Rejected

READ YOUR INSTRUCTION PAGE

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

FOR PUERTO RICO AND VIRGIN ISLAND SHIPMENTS ONLY

DATE: 11 8 73

SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE: SEAU 88957 Seal #LifChi01213/14

ORIGINATING CARRIER: Lifschultz F Frt.

SEA LAND BOOKING NO.: 14-05330

VESSEL: R-NYSA 2-4 Rejected

VOYAGE NO.: PORTLAND V167

CONTAINERS LOADED

BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT
88957			

COMM. CODE:

FNH: 18605

FOR OFFICE USE ONLY: 707068

CONSIGNED TO: (NAME AND COMPLETE ADDRESS)
San JuanFreihgt Inc.
Carolina, Puerto Rico

END OF SERVICE

STORE DOOR DELIVERY NAME-STREET-ADDRESS-CITY: ☐ NOT REQUIRED — UNLESS CHECKED, DELIVERY WILL BE PERFORMED

SHIPPER: (NAME AND COMPLETE ADDRESS)
San Juan Freight Forwarders, Inc.
28 No. Franklin Avenue
Chicago, Ill.

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

ROUTING: SEA-LAND SERVICE, INC.

PORT OF LOADING: Port Elizabeth

PORT OF DISCHARGE AND/OR TERMINAL: ☐ SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ ARECIBO (LTL ONLY) OTHER

ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: SHIPPER — STATE

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES Type of Packages - Full Description of Merchandise - Measurements Where Required	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: DOR F	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
2	Ctns Valves	90	1	D		160.00		209	1 88
7	Ctns Screws, Iron or Steel	248	7	D		960.00		129	3 20
53	Ctns Parts, machine	1376	28	D		6000.00		209	28 76
414	Ctns Brooms or Mops	10990	1300	D		8005.00		61	793 00
10	Ctns Binders or Covers	378	6	D		350.00		75	4 50
3	Ctns Fans Electric	45	2	D		125.00		82	1 64
2	Ctns Blowers or Exaust	198	3	D		350.00		197	3 90
9	Ctns Hampers	280	20	D		500.00		73	14 60
4	Pallets Paperboard	5000	150	D		4500.00		40	60 00
	[redacted]		1517						
	TOTALS	18605							

INSURANCE OPTION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

INSURANCE COVERAGE: ☐ MARINE RISKS ☐ ALL RISKS ☐ REEFER CLAUSE ☐ WAR SR & CC — VALUE $

If Export Declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for export control and customs purposes. (FMC Appl. #30) The exporter declares that all information contained in the Export Declaration Section of this Bill of Lading is true and correct and that he is aware of the penalties provided by law for making false or misleading statements.

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ Per _____

SHIPPER, BY: _____ SIGNATURE _____ DATE _____

CARRIER, BY: _____ SIGNATURE _____ DATE _____

SEAL _____

	TOTAL OCEAN FREIGHT			911 48
23	PICK-UP	LBS.		—
22	LANDING 1912	LBS.	5.4	1 03
22	LANDING 1325	CU. FT.	2.2	29 22
16	DELIVERY	LBS.		—
21	INSURANCE ON $			—
18	DOCUMENTATION			3 00
30	OTHER			
	TOTAL CHARGES			944 73

Jot

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

Case Nos. 2-CC-1364, 2-CE-75, 2-CC-1365

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

FILE Judges Div.

FILE IN FORMAL FILE

Received Oct. 19, 1977 Dlv. of Judges NLRB Wash., D.C.

NYSA'S DIRECT CASE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN M. HAYNES, being duly sworn deposes and says:

I am the Executive Vice President of Respondent, New York Shipping Association, Inc. ("NYSA"). I submit the following direct testimony and annexed exhibits on behalf of Respondent, NYSA.

I was first employed by NYSA in 1958 as special assistant to NYSA's Chairman. Prior to my employment

with NYSA, I was employed by American President Lines, first as a seagoing officer and later as its port captain or terminal manager at its pier facility in the Port of New York. I have from time to time physically observed the operations at most of the waterfront facilities in the Port of Greater New York. My duties and functions, first as special assistant to NYSA's Chairman, then as NYSA's Administrative Director, and now as Executive Vice President, have consisted of active participation in the negotiation, administration and implementation of labor contracts entered into by NYSA with the International Longshoremen's Association, AFL-CIO ("ILA"). I am intimately and personally aware of the facts and circumstances set forth in this direct case.

I. *Interested Persons*

A. *Employer Associations*

1. Council of North Atlantic Shipping Associations ("CONASA") is an unincorporated multi-employer bargaining association, which functions as the collective bargaining representative in negotiating and administering collective bargaining agreements with the International Longshoremen's Association, AFL-CIO ("ILA") covering terms and conditions of employment of longshore labor in the ports of Boston, New York, Providence, Philadelphia, Baltimore and Hampton Roads, on the North Atlantic coast of the United States. Its members are the various employer shipping associations operating in the six major North Atlantic ports, as follows:

The Boston Shipping Association, Inc.
Rhode Island Shipping Association, Inc.
New York Shipping Association, Inc. ("NYSA")
Philadelphia Marine Trade Association
Steamship Trade Association of Baltimore, Inc. and Hampton Roads Shipping Association

CONASA's constituent port association members, each negotiate and administer collective bargaining agreements with the ILA covering local conditions.

2. NYSA is an incorporated New York Not-for-Profit membership association which negotiates and administers collective bargaining agreements with ILA on behalf of its members. The membership of NYSA consists of stevedores, common carriers by water, carrier agents, terminal operators, lighterers, contracting guard service and other concerns functioning in waterfront related activities involving or related to the ocean shipment of cargo, freight and the transportation of passengers.

3. For many decades, beginning on the Atlantic and Gulf coasts commenced with negotiations between the ILA and its constituent locals, and NYSA in the Port of New York. After agreement had been reached with NYSA, the ILA would bargain with other ports. In 1956, a major demand of the ILA in New York negotiations was for the extension of bargaining on a coast-wide basis. After a lengthy strike that year the employer associations in the other North Atlantic ports agreed that NYSA could execute a master contract on behalf of itself and the other North Atlantic ports with respect to certain specified issues. In 1956, and in each of the succeeding collective bargaining periods, including the one ending September 30, 1971, master contracts covering the specified items were entered into by NYSA with the ILA for and on behalf of itself and the other North Atlantic employer associations. Prior to negotiations of the 1971-1974 contract with the ILA the constituent member associations of CONASA entered into an arrangement to form CONASA. Thereupon, negotiations commenced between CONASA and the ILA concerning various terms and conditions that would be applicable to all North Atlantic ports. Certain other items known as local working conditions would still be negotiated locally by each of the ports with ILA. On November 16, 1971, CONASA and the ILA formalized the scope of their negotiations in a memorandum of agreement, annexed hereto as Exhibit 1, which reads in pertinent part as follows:

> "1. ILA and CONASA agree to act as the collective bargaining representatives for their constituent locals and members, as referred to

above, on the seven master contract items which are as follows:

A. Wages
B. Hours
C. Contributions to the Welfare Plans (but not the benefits)
D. Contributions to the Pension Plans (but not the benefits)
E. Term of the Agreement
F. Containerization [which includes the Rules on Containers]
G. Lash

All other terms and conditions of employment are local items which will be negotiated locally by each of the above port associations and their ILA locals in each respective port."

B. *Union*

4. ILA, an unincorporated labor organization, has for more than 50 years represented longshore employees who perform the work of loading and unloading ships, and all other functions incident thereto in the Port of New York as well as in all other applicable ports on the East and Gulf coasts of the United States. ILA has been certified by the NLRB as the exclusive bargaining representative of said employees (*See, Matter of New York Shipping Association*, 116 NLRB 1183 (1956)). It has negotiated and entered into collective bargaining agreements with CONASA, NYSA, and with the other constituent member associations of CONASA, covering the terms and conditions of employment of these employees in the CONASA ports. Similarly, ILA negotiates and enters into collective bargaining agreements covering the terms and conditions of employment of these employees in other ports on the East and Gulf coasts of the United States.

C. *Joint Labor Management Bodies*

5. The CONASA-ILA Container Committee is a joint labor-management board formed and created pursuant to the provisions of the 1974-77 collective bargaining agreement between CONASA and ILA for the purpose of implementing and administering in all six CONASA ports the CONASA-ILA Rules on Containers to insure clarity and uniformity of interpretation and enforcement. It is composed of an equal number of representatives of labor and management—one CONASA and one ILA representative from each CONASA port.

6. There is in each CONASA port a joint labor-management committee consisting of an equal number of union and management representatives formed and created pursuant to the provisions of the 1974-77 collective bargaining agreement between CONASA and ILA and to the provisions of the applicable local ILA collective bargaining agreement in each CONASA port. Each joint committee is authorized and responsible for the implementation and administration, within its particular port area, of the CONASA-ILA Rules on Containers. Each joint committee is empowered *inter alia* to hear and pass judgment on any violations of the CONASA-ILA Rules on Containers.

7. The NYSA-ILA Contract Board is a joint labor-management board consisting of an equal number of NYSA and ILA representatives. It is charged with the implementation and administration, within the Port of Greater New York, of the 1974-77 CONASA-ILA collective bargaining agreement and the local collective bargaining agreements entered into between NYSA and ILA. The NYSA-ILA Contract Board also acts as the NYSA-ILA Container Committee whose jurisdiction encompasses the CONASA-ILA Rules on Containers, their enforcement and administration. The NYSA-ILA Container Committee is empowered *inter alia* to hear and pass judgment on any violations of the CONASA-ILA Rules on Containers occurring in the Port of Greater New York.

D. *ILA's Traditional Work Jurisdiction*

8. For many decades, ILA members on the Atlantic and Gulf coasts have handled, to the exclusion of all other workers, all of the work in connection with the loading and discharging of cargo on ships. In addition, the ILA workers have also performed work on the piers which is known as terminal work. Terminal work includes all services rendered by contracting stevedores and steamship carriers either after the cargo has been discharged by the ship or before the cargo has been put aboard the ship. This work has included all work in connection with the preparation of such cargo for loading aboard the ship and all work preparatory to delivery of the cargo to inland carriers, after the cargo is discharged from the ship. The receipt and delivery of cargo has also been performed by ILA workers. Traditionally, export cargo would normally be delivered by truck, rail or lighter to the terminal facility. ILA longshoremen would receive (and thereafter handle) the cargo from the tailgate of the truck, from the door of the railcar and from the first place of rest after removal from a lighter. This work was handled piece by piece and parcel by parcel.

9. Prior to the use of special equipment such as hi-los, longshoremen would lift the cargo, piece by piece, into hand trucks and move it to a place of rest in the terminal building. Here, the cargo would be prepared for loading aboard the vessel. ILA checkers would tally the cargo, either truckside or at the terminal; ILA longshoremen would make up the drafts and pallets in preparation for lifting the cargo into the ship; ILA coopers would repair any damage to that cargo; ILA carpenters would prepare wooden boxes or containerlike devices where special security or care in handling was required; and ILA sorters might sort the cargo by type, port, hatch, etc.

10. After this cargo was prepared for loading, ILA ship gang workers would receive the cargo at a place of rest at the end of ship's tackle. It would be brought to this point by ILA terminal workers. From this place of rest, the cargo would be lifted into the ship's hold. In

order to properly safeguard the cargo and protect the stability of the vessel, it was necessary for ILA carpenters to lay dunnage, make wooden separations and build up floors in the hold on which cargo could rest. Here, ILA longshoremen would again take the cargo, piece by piece, and place it in secure positions throughout the hold or hatch, following the loading plan of the ship's officer or stevedore supervision. Thus, cargo would have to be loaded so that it was readily accessible at the various ports at which the ship might call. Cargo which was to be removed at the first port-of-call would have to be so placed that the longshoremen at that port could remove such cargo without disturbing other pieces of cargo destined for later ports-of-call. The ship's labor also had to take into consideration the weight, density, fragility, combustibility and other elements relating to particular pieces of cargo. In brief, the longshoremen performed a tedious, manual task which required many hours of labor as well as the skill attached to the know-how of ship's stowage and cargo peculiarities.

11. With respect to import cargo, the work performed by the longshoremen and other ILA crafts was substantially similar. A vessel arrived at the Port of New York which, in all probability, contained cargo for other North Atlantic ports such as Boston, Philadelphia, Baltimore or Hampton Roads. The New York longshoremen would identify the New York cargo and remove it from the ship. At the same time, they would be required to protect the cargo remaining aboard the ship by shoring or other devices. Prior to 1962, most vessels in the Port also had ILA hatch checkers who would tally the cargo as it was removed from each hatch and give a report to the terminal supervision, on a piece-by-piece basis, of the cargo actually removed. After being put to a place of rest on the pier, the cargo would be taken either by hand, (or later by hand truck, and even later by hi-lo) into the terminal where it would be placed in designated areas. There, the cargo would be prepared for delivery to the consignee-drafts and pallets would be broken down, wooden boxes would be opened and unloaded, cargo would

be sorted in accordance to type, size, shape, consignee, etc. Fragile or highly pilferable cargoes would be placed into special security areas knows as cribs, security lockers, etc. Thereafter, the cargo would be delivered to the consignee. If the consignee had sent a truck to the pier, ILA longshoremen would take the cargo from the terminal and physically load the truck while ILA checkers kept a tally of this loading process. Similar functions were performed in respect to railcars and lighters or barges.

12. World War II brought about a use of various box-like devices into which cargo could be stored. The military had used such devices for special cargoes such as munitions, food stuffs, weapons, etc. After WW II, certain of the steamship carriers acquired some of the boxes and used them for highly pilferable, fragile or hazardous cargoes. However, such use was infrequent and of little consequence. On an average ship, such cargo might relate only to less than a fraction of one percent of the total cargo on a particular ship. However, the loading of cargo into, and the discharging of cargo out of, such devices was always performed by ILA labor at the pier or terminal. As these containers or devices became more common, certain exceptions began to develop. One such exception pertained to United States Mail. Prior to the use of these boxes, U.S. Mail was normally delivered to the pier in large canvas sacks. The eventual use of 8' x 8' x 8' boxes (as well as some smaller) by the U.S. Mail was considered somewhat akin to the large canvas sacks. Further, the ILA longshoremen have historically had an intense patriotic nature. It was considered that the U.S. Mail should be permitted to move with facility, ease and little restriction. The same consideration was true with respect to the personal effects of military personnel. The ILA felt it had a special obligation to the embarking soldier or the returning warrior whose personal effects were entitled to special protection and quick transport.

13. Insofar as household goods were concerned, there was a special historical reason which emanated from the early 1930's. At that point in time, refugees from Nazi Germany were emigrating to the United States. Such

household effects as they were able to take with them were almost invariably placed in large wooden crates similar to a household moving van. The total amount of such personal household effects were negligible and again the longshoremen permitted their removal on and off the piers. When the Puerto Rican migration commenced in the period following World War II the same considerations were applied to such migrants.

14. The work opportunities thus presented created the approximately 43 million hours of work which longshoremen performed in 1958 in handling 12 million long tons of cargo. Thus, (at that time) productivity in the port averaged about .3 of a ton of cargo for every manhour worked. At the present time, there are approximately 19 million tons of cargo being moved with approximately 19.5 million manhours. Thus, the productivity per manhour in the Port has increased by 300%. If the productivity of 1958 had remained on the same basis, there would be approximately 60 million workhours for the ILA in the Port of New York today. Exhibit 2 annexed hereto sets forth NYSA Employment Statistics setting forth for contract years ending 9/30/51 to 9/30/76 inclusive total ILA employees registered with the Waterfront Commission in the Port of New York, total hours worked, total wages paid and total Guaranteed Annual Income ("GAI") expenses incurred.

15. Of the 12,264 men now in the workforce, an average of 7,500 men are hired on a daily basis. Seldom does the daily hiring reach the 8,000 man mark. Containerization still left a substantial amount of work on the piers and terminals to be performed by ILA members. ILA longshoremen and other dockworkers have worked on stuffing and stripping containers at the piers from the very inception of containerization to the present time. Every container steamship line in the Port of New York maintains an LTL (less-than-trailer-load) facility at its piers where substantial numbers of containers have cargo loaded into the discharged out of such containers by ILA members. Cargo going into such containers is delivered to such facilities and is handled from trucks by ILA workers who physically load the cargo into con-

tainers. Similarly, cargo from such containers is discharged by ILA workers who deliver such cargo to delivery platforms for loading by other ILA workers into trucks. In the year 1975 it is estimated that over 2,000 ILA employees worked over 3 million manhours handling over 1.5 million LFL tons of cargo. The purpose and intent of the ILA in pressuring NYSA and its members was to maintain and preserve such LTL work for ILA employees.

16. From the very inception of containerization, the ILA resisted strenously the use of the container concept. The ILA opposed any concept which would take away any of the work traditionally performed by its members. This resistance has been manifested in strikes, wildcat job action, grievances, arbitrations and court actions. The first arbitration involving containerization is dated November 13, 1958. In this proceeding, clerks, checkers and longshoremen at United States Lines' Piers 59 and 74 on the North (Hudson) River in Manhattan refused to handle six containers consigned to Bremerhaven and to Antwerp. Four of these containers were Railway Express containers "said to contain household and military effects." The other two were Ford Motor Company boxes "said to contain auto parts." The arbitrator directed that these containers be handled but recommended ". . .that the parties promptly meet for the purpose of achieving a solution of the entire subject. . ." The ILA did not accept this decision. On the contrary, it issued instructions that it would not handle any containers for any steamship lines who had not engaged in container operations prior to October 1, 1956. The ILA sought to prohibit any change in the method of handling containers from that followed by steamship carriers prior to 1956. The Vice President of United States Lines had conceded the pre-1956 practice in the industry of loading and unloading containers at pierside with ILA labor when he stated at a meeting of the Port of New York Joint LRC (a joint labor-management board formed to enforce and administer collective bargaining agreements between NYSA and ILA) held on November 19, 1958:

> "Let me clarify something. We have handled containers *prior to 1956, but containers that were loaded on the pier. That is, the cartons are loaded in the containers on the pier, and discharged.* I am not going to mislead anybody." (*Emphasis added*)

For several weeks after the ILA's announcement, many containers in the Port were stopped. As a result of grievance discussions before the Port Arbitrator, on December 17, 1958, the Port Arbitrator issued an announcement that the ILA had agreed to handle containers for all companies engaged in the operations as of November 12, 1958 when the container matter was first brought before the Port of New York Joint Labor Relations Committee. Steamship companies not previously handling containers would give advance notice to the ILA of any such proposed new operations. In the meantime, the parties would negotiate with an attempt to reach a solution. The arbitrator announced further that in view of this agreement ". . .the container dispute currently in arbitration would accordingly be held in abeyance without prejudice to either party." Such negotiations and meetings were held for many weeks thereafter. However, no agreement could be reached and the parties entered the 1959 negotiations with containerization a major issue. It would remain a major issue for the next eighteen years and is the critical issue in the current longshore negotiations which, as of this date, are marked by a general longshore strike against all containership carriers on the East and Gulf Coasts.

E. *The 1959 ILA Negotiations*

17. Various proposals and counter-demands were placed on the table:

(a) ILA's persistent demand was that all containers ". . .be opened on the pier and discharged by ILA."

(b) NYSA's initial counter-demand was for contractual language that would protect the "un-

fettered" rights of employers "to inaugurate and regulate automation operations. . ."

(c) On October 20, 1959, NYSA sought to satisfy the union's principal concern with consolidators by proposing a penalty of 25 cents per gross ton on cargo in containers loaded by forwarders and consolidators who did not employ ILA labor.

(d) This proposal was rejected out of hand by the ILA. In a proposal of October 29, 1959, the ILA demanded that the employers ". . .agree that their employees shall be protected against any job, work, and benefits losses which may result from unitized cargo or container use, and that their employees are entitled to a fair share from the benefits of increased efficiency."

18. After strenuous negotiations on this issued, the collective bargaining agreement of December 3, 1959 (covering the 3 year period from October 1, 1959 to September 30, 1962) recognized the right of employers "to use any and all types of containers without restriction or stripping by the Union." However, it was agreed that:

> "Any work performed in connection with the loading and discharging of containers for employer members of the NYSA which is performed in the Port of Greater New York whether on piers or terminals controlled by them, or whether through direct contracting out, shall be performed by ILA labor at longshore rates." (Section 8(c), Memorandum of Settlement, December 3, 1959).

The NYSA-ILA 1959 Memorandum of Settlement is attached as Exhibit 3. It was further agreed in the 1959 Memorandum of Settlement that the parties would negotiate, and on failure to agree, arbitrate the royalty to be paid on shipper load containers which are loaded or unloaded away from the pier by non-ILA labor. After a

lengthy arbitration was held on the container royalty matter, an award was issued on November 21, 1960 fixing the amount of the royalty at 35 cents per gross ton on conventional ships, 70 cents per gross ton on partially automated ships, and $1.00 per gross ton on fully automated ships. The Arbitration Award is attached as Exhibit 4.

F. *The Period Following the 1959 Negotiations—A Period of Labor Strife.*

19. The 1959 negotiations were no sooner completed before labor strife, in the form of wildcats and quicky stoppages, erupted throughout the Port in protest of the loss of job opportunities caused by containerization. The parties began the arduous task of applying the new contractual language to actual situations. The union's position during these many grievances was that the 1959 negotiations only permitted the free movement of containers in the area outside of the Port. After many work stoppages and months of discussion, NYSA issued the following statement to the ILA on February 28, 1962, to clarify NYSA's interpretation of Section 8(c) of the 1959 Memorandum of Settlement:

> "Where an employer member of NYSA supplies a container which is the property of such member, to a consolidator for loading or discharging of cargo in the Port of Greater New York, it will be stipulated that such container must be loaded or unloaded by ILA at longshore rates."

The February 28, 1962 Interpretation is attached as Exhibit 5. Thus, from February 28, 1962, the rule that ILA labor would strip and stuff a container of a steamship carrier supplied to a consolidator, which was the traditional custom and practice in the industry, was codified in the established labor relations law in the Port of New York.

20. This rule was shortly thereafter applied against Sea-Land Services, Inc., which was the inaugurator of fully-containerized operations, using specially designed

cellular container ships. Sea-Land first commenced full containership service in 1958 in the New York to Puerto Rico trade. In 1962, Sea-Land was found by the Joint NYSA-ILA Labor Relations Committee ("LRC"), to have violated the contract in supplying containers to consolidators. The minutes of the LRC proceeding is attached as Exhibit 6.

21. The fight against containerization was led by the ILA's President, Thomas W. Gleason, who has prophetically stated the impact of containerization on the job opportunities of the ILA's members. Thus, at the 1959 ILA Convention (July 13, 1959), Mr. Gleason stated:

> "I believe that the cargo container will be forced on shipping lines through competition . . .I am convinced that it has got to come, and when it does come, its effects on us can be tremendous. It is not too farfetched to estimate that we stand to lose, in the full force of the container use, 8,000 to 9,000 jobs in the New York area alone, and a proportionate number in all other ports. This amounts to 30% of the membership. . ."

G. *The Period from 1962 Through 1968*

22. The 1959 statement of President Gleason has continued as the basis for ILA policy in all ensuing negotiations. In 1962, NYSA was seeking to obtain relief from restrictive work practices under the collective bargaining agreement. After a lengthy strike, a Presidential mediation panel, headed by Senator Wayne Morse, recommended that the parties agree to a comprehensive study on manpower utilization and job security by the United States Department of Labor. This study was to be made during the term of the new 2-year agreement and the results of such study were to be the subjects of bargaining in the 1964 negotiations. As a result of the Government's intervention, no changes were made in the containerization agreement (Exhibit 3, p.2, 1959 Memorandum of Settlement, Section 8(c)), although the ILA had demanded that all containerized cargo be loaded or discharged by ILA labor only. The fact that the contract

language did not change, did not end the constant labor struggle against expanded containerization. Thereafter, containers found by the ILA, which it considered violated the contract were stopped. It had been the employer position that the provisions of Section 8(c) of the 1959 Memorandum of Settlement (Exhibit 3, p.2) applied only to containers owned or leased by employer members of NYSA. The ILA position was to the contrary. Grievances and work stoppages continued. Those that involved the supplying of the carriers' containers to consolidators were resolved in favor the the ILA; other situations for the most part went unresolved. Countless meetings held on the subject by representatives of both NYSA and ILA were unable to finally resolve the many troublesome issues.

23. At the advent of the 1964 negotiations, the ILA again made its demand that all containers be loaded and stripped by ILA deep-sea labor. However, the major issue in the 1964 negotiations related to the recommendations of the Department of Labor's Manpower Utilization Study which recommended certain changes in the work rules and additional job security for the worker. After lengthy arduous and strike-marked negotiations, an agreement was worked out giving the employers certain concessions in the area of manpower utilization and giving to the union members the first GAI plan in the industry. The containerization provisions of the labor agreement remained unchanged. No sooner had the contract been agreed to, than the ILA renewed its efforts in its fight against containerization. Again, there were many incidents involving stoppages of containers on the waterfront. In November of 1966, the ILA demanded that the agreement be reopened on the subject of containers. NYSA refused but did meet with the union over a long period of time in an attempt to find some common solution to this perplexing and long-continuing problem. Meetings were held in November, December of 1966 and January, February of 1967. NYSA on December 15, 1966 issued a motion proposing strict contract compliance with respect to the use of containers and proposing a joint study to assist workers who were displaced by

containerization. The inability of the parties to find areas of agreement apparently convinced the ILA that broad relief could only be attained in the course of the negotiations. By 1967, containerized cargo had grown substantially to approximately 2.6 million long tons, or approximately one-fifth of the cargo handled in the Port of New York. In 1967 Sea-Land Service, Inc. introduced the first fully-containerized vessel into the large North Atlantic trade. Many major steamship carriers then announced plans for embarking on container operations and many new and fast containerships were being built in shipyards throughout the world.

24. A full year before the 1968 negotiations commenced, the ILA held its conventions in Miami Beach, Florida, during the period July 10 to July 21, 1967. Resolutions were passed in opposition to containerization calling for all containers to be stuffed and stripped by ILA labor at deep-sea rates and at waterfront facilities, piers or terminals. The ILA thus entered the 1968 negotiations with a mandate from its Conventions that containerization be seriously restricted. NYSA entered the negotiations with a desire to protect the new innovative method of cargo movement.

H. *The 1968 ILA Negotiations*

25. Negotiations began in July of 1968. They were destined to be heated, protracted and marked by a long strike that lasted 57 days in New York and over 100 days in the other ports along the East-Gulf coasts of the United States. The major issue in these negotiations was first, and foremost, the issue of containerization. In its report to the President of the United States, the Board of Inquiry, established pursuant to the national emergency provisions of the Taft-Hartley Act, stated in its report, dated October 1, 1968 (attached as Exhibit 7):

> "There are two everriding issues and the failure to resolve these has prevented the parties from reaching agreement on other items."
>
> "The two critical issues relate to union-wide collective bargaining and the impact or consequences of containerization or mechanization." (Exhibit 7, p. 3)

26. In the opening days of the negotiations, the goals of the ILA and the goals of NYSA on containerization were diametrically opposed. The ILA demand was that all containers and containerized cargo was to be stripped and loaded by ILA labor. NYSA's first proposal sought the free movement of containers of all types without restriction. These counter demands were both made on the same day, namely, July 10, 1968. In the almost ten years since the 1959 negotiations NYSA and ILA had essentially agreed that containers coming from consolidators were to be stuffed and stripped by ILA labor, at the piers or docks. This was the clear thrust of Section 8(c) of the 1959 agreement. That which NYSA sought to preserve was the free and unfettered movement of non-consolidated full shipper's loads of containers moving in great volume through the Port of New York.

27. From August 23 of 1968 and continuing into January of 1969, the subject of containerization was almost a daily item for discussion and continued disagreement in the negotiating sessions. On October 1, 1968, the ILA called a coast-wide strike in all ports from Maine to Texas. This strike was enjoined under the emergency provisions of the Taft-Hartley Act shortly after it started. Negotiations continued in the following months, again with very little progress. It was not until after NYSA agreed to increase GAI benefits, which up to that time covered 1600 hours per year, to 2,080 hours per year, that ILA indicated a willingness to explore changes in its position which would permit the continued free flow of shippers' loads of containers. This improvement in GAI was to cost the employers in the Port of New York in the contract year ending 9/30/76 over $50,000,000 per year in additional benefits (Exhibit 2). It was the *quid pro quo* for the ILA moving away from its firm position of adamancy that *all* containers be stuffed and stripped at the docks by ILA labor. By January 12, 1969, basic agreement had been reached in the Port of New York. The 3-year collective bargaining agreement

(attached as Exhibit 8) to be effective for the period October 1, 1968 to September 30, 1971 contained the following three major items:

(a) Wage and fringe benefit increases amounting to $1.60 per hour over the three-year term;

(b) An increased GAI of 2,080 hours per year for all qualified workers covered by the various ILA craft agreements; and

(c) The Rules on Containers

28. The ILA had by the collectively-bargained Rules on Containers thus preserved the protection it had won beginning in 1959, and which it had fought for with countless strikes and work stoppages. On the other hand, the employers won the right to continue to move most containers, namely non-consolidated full shipper loads, without stuffing or stripping by union members. Thus, manufacturers' loads or full shippers' loads, as well as all containers coming from or going to points fifty or more miles from a port, constituting 80% of the containers moving in the Port of Greater New York, were excluded from the stuffing and stripping requirements. The ILA insisted on each and every one of the eight different rules set forth in Rule 3 of the Rules on Containers and entitled "Rules on No Avoidance or Evasion". Each of these rules was intended to assure that the employers and carriers would live up to their obligations and stuff and strip at the piers all LTL or consolidated container loads. Most importantly, the union insisted on a clause set forth in Rule 3(h) which, in effect, permitted the renegotiation of the rules if the purpose of protecting and preserving the work jurisdiction of the ILA was not accomplished by the provisions of the rules. Rule 3(h) was resisted strongly by the employers who capitulated under pressure at a time when the entire coast was shut down and where the effect on the national economy was extremely grave.

29. The labor agreement reached on January 12, 1969, in New York did not end the strike. The ILA refused to submit the agreement for ratification until all other ports had accepted the basic New York contract. Refusal to bargain charges were brought to the National Labor Relations Board by NYSA. The NLRB sought and secured an injunction mandating a referendum by the ILA members in New York. On February 14, 1969, the agreement having been accepted by the membership, the strike ended and there was a return to work in New York. In other ports, the strike continued. Finally, on April 14, 1969, agreement was reached in the last holdout ports in Texas. The strike had lasted a total of 115 days in various ports. In the last analysis, however, the ILA obtained approximately the same container agreement in all ports from Maine to Texas.

I. The Period Following the 1968 Negotiations—Second Circuit and NLRB Upheld Legality of Rules on Containers

30. The new collective bargaining agreement created a container committee which ". . . shall have the responsibility and power to hear and pass judgment on any violations of these rules." (Exhibit 8, p. 70 Rule 3(g)). Shortly after the negotiations ended, the functions of the committee were given to the NYSA-ILA Contract Board. During the period following the contract, it met with great frequency and held hearings on alleged violations of the Rules. This committee has made many findings of violations, especially in cases involving consolidators. Attached as Exhibits 9A through 9G inclusive are various container violation reports which were issued during that period, advising all stevedores and carriers of the necessity for strict compliance with the Rules on Containers.

31. The work of the NYSA-ILA Contract Board with respect to containerization continued with almost weekly meetings. In May of 1970, the ILA gave notice that the traditional work jurisdiction of deep-sea longshoremen was being threatened by certain practices including letters of concurrence issued by certain members of the NYSA. (A concurrence was an authorization issued by a carrier that customs inspection could be carried out at a facility away from the piers.) The ILSA demanded

assurances from NYSA that the Rules on Containers would be enforced according to their terms and all concurrences would be withdrawn. The ILA charged that these concurrences were being used as a device to have containers moved to consolidators' stations where customs inspection would take place. Extensive negotiations were held between the NYSA and ILA on this subject. The parties were unable to reach agreement. Thereupon, ILA invoked the provisions of Rule 3(h) (Exhibit 8, p. 70) and issued directions to its membership that all containers in all North Atlantic Ports were to be stuffed and stripped at the piers. This stoppage of all containers continued for several days. Finally, settlement was reached on May 27, 1970 (Exhibit 9D).

32. The legality of the Rules on Containers was tested in the Courts and before the NLRB by Intercontinental Container Transport Corporation ("ICTC"). ICTC brought an action in the federal courts against NYSA and ILA, seeking to enjoin the enforcement of the Rules on Containers based on their alleged illegality under the Antitrust Laws. The United States Court of Appeals for the Second Circuit, *International Container Transport Corp.* v. *New York Shipping Association, Inc. and International Longshoremen's Association*, 426 F.2d 884 (2nd Cir. 1970), upheld the lawfulness of the Rules on Containers as valid work preservation provisions. Similarly, the Rules on Containers were held to be valid work preservation rules by the 22nd Region of the National Labor Relations Board ("NLRB") in NLRB Case Nos. 22-CE-12 and 22-CC-389. In that case, ICTC filed an unfair labor practice charge asserting that NYSA and ILA had by the Rules on Containers violated 8(e) of the National Labor Relations Act, as amended, and that the ILA had violated 8(b)(4)(B) thereof, by entering into "an agreement whereby said employer-member ceases or agrees to cease doing business with other employers." After extensive analysis and investigation, the charges were dismissed and the validity of the Rules on Containers upheld since they were found to involve legitimate union concern and a proper subject of collective bargaining. The determination of John J. Cuneo, Regional Director of the NLRB, is annexed as Exhibit 10. On appeal, the dismissal by the Regional Director was affirmed by the General Counsel of the NLRB in a decision dated October 16, 1970, which is attached as Exhibit 11.

J. The 1971 CONASA-ILA Negotiations

33. Negotiations between CONASA and ILA continued on various dates from November 16, 1971, through February 14, 1972. The ILA had commenced a coast-wide strike on October 1, 1971, because of the breakdown of negotiations and the GAI issue in New York. This strike continued until enjoined by a Taft-Hartley injunction in various courts during the period November 26, 1971 to November 29, 1971. In the negotiations with CONASA, ILA was concerned not so much with the substantive container rules but with methods of assuring that the Rules on Containers were uniformly and non-discriminatorily enforced and applied. Most of the negotiations during the 1971-1972 period were spent in discussions with respect to methods of enforcing compliance with the Rules.

34. The result of these lengthy negotiations between CONASA and ILA was that the Rules on Containers were adopted as the CONASA-ILA Rules and embodied in the present collective bargaining agreement between CONASA and ILA covering the period from November 14, 1971 through September 30, 1974. The CONASA-ILA labor agreement is attached as Exhibit 12.

35. Soon after the contract had ben agreed to by the ILA, the ILA continued its efforts to obtain full and complete enforcement of the Rules on Containers. At meetings with employer representatives the ILA again reiterated its position that the carriers were violating the contract. On May 11, 1972, the ILA, by Thomas W. Gleason, President, served notice on NYSA that violations of the Rules on Containers ". . . have now grown to where there is a complete abrogation and disregard of the contract with respect to the loading and stripping provisions . . .". The ILA served notice that unless all violations are stopped immediately the ILA would in-

voke its contractual rights under 3(h) of the Rules on Containers (Exhibit 12, p. 3). In response thereto, on May 12, 1972 the President and Chairman of NYSA sent a letter to all steamship carriers and direct employers that the Rules on Containers must be strictly observed (Exhibit 9G). In this connection it was stated that: "The ILA is particularly disturbed by the increased use of consolidators and truckers to perform work which is clearly within the jurisdiction of the ILA under the contract." It was stated that spot audits and investigations would commence immediately.

36. From that point forward, the two container investigators, employed by the joint NYSA-ILA Container Fund, to uniformly enforce the Rules on Containers and to uncover and investigate violations thereof, were supplemented by NYSA employees who began to visit the many consolidation facilities in the Port of Greater New York where containers were being stuffed and stripped by other than ILA labor. After the above letters (Exhibit 9G) were distributed, many meetings of the NYSA-ILA Contract Board sitting as the joint NYSA-ILA Container Committee were held and reports of investigations received. In the course of these meetings, various steamship carriers were called in for the purpose of determining whether or not the Rules were being violated. Despite the best efforts of the parties, the ILA continued in its position that the Rules on Containers were not being lived up to especially with respect to consolidators' facilities. Finally, on October 31, 1972, a notice was sent by the NYSA-ILA Contract Board to all steamship carriers and direct employers. A copy of this letter is attached as Exhibit 13. This letter again warned that the ILA was concerned with "the spread of consolidation stations operated by steamship carriers as well as those outside the industry" and that the ILA would invoke 3(h) unless the violations were discontinued.

37. The number of violations found by the container investigators continued to grow. The ILA had stated many times that the carriers could stop the violations by not supplying their containers to consolidators or to others who used them to circumvent the contract. On

November 15, 1972, notice was given to the principal container lines in the Port of New York to attend a meeting at the Whitehall Club on November 20, 1972. At this meeting (the minutes are appended hereto as Exhibit 14) the ILA took the strong position that supplying containers to consolidators was a violation of the contract and that all containers should be stopped unless the stevedores and carriers began to live up to the agreement. After the meeting of November 20, 1972, counsel met on several occasions for the purpose of drafting a document entitled "Enforcement of Rules on Containers". This document carried out the intent of the meeting of November 20, 1972. It was circulated to all carriers for their comments on December 19, 1972. A copy of the document and covering letter is attached as Exhibit 15. Certain changes were made in the draft between December 18, 1972 and its presentation to the meeting of the CONASA-ILA Container Committee held on January 25-29, 1973, in Dublin, Ireland. A copy of the Minutes of the Dublin meeting together with Interpretive Bulletin No. 1 which was issued as a result thereof, is attached as Exhibit 16. Interpretive Bulletin No. 1 was the collectively bargained interpretation of the Rules on Containers formulated by CONASA and ILA for the purpose of promulgating rules for the uniform and effective enforcement of the Rules on Containers. It codified *inter alia* the standing principle first enforced against Sea-Land Services, Inc. in 1962 that a carrier is prohibited from supplying its containers to consolidators. The Dublin Rules were viewed as the means needed to restrain violations of the Rules on Containers. If CONASA, NYSA and the ocean carriers had refused to accept the Dublin Rules, the ILA would have struck and stopped all containers in the North Atlantic ports, including the Port of New York. Soon after their enactment, the Dublin Rules were applied against various steampship carrier members of NYSA. In 1973, 1974 and 1975, these carriers, including those named in the complaint, *viz.* Transamerican Trailer Transport, Inc. ("TTT") and Puerto Rico Maritime Shipping Authority ("PRMSA"), paid many hundreds of thousands of dol-

lars for not obeying the Dublin Rules and for permitting consolidated containers to move over their docks without stripping or stuffing by ILA workers. The carrier members of NYSA were instructed to insist that LTL cargo be delivered to the piers in uncontainerized form.

K. *1974 Negotiations*

38. As had been the case in every major negotiation with the ILA since 1957, and specifically including the 1959, 1962, 1964, 1968 and 1971 negotiations, the principal issue faced by the CONASA-ILA negotiators continued to be containerization and its tremendous impact on the job opportunities of the ILA employees on the piers and terminals in the North Atlantic coastal range. The negotiations commenced again with the demand of the ILA that all containers be stuffed and stripped on the piers by the ILA. In presenting this demand at the commencement of the CONASA-ILA negotiations, ILA President Thomas W. Gleason again reiterated the oft-repeated position of the ILA that containerization had deprived the ILA of countless job opportunities and that in order to protect its traditional work jurisdiction and the pierside jobs of the ILA longshoremen and related crafts, the ILA would have to insist upon the right to stuff and strip every container at the pier facility with deepsea ILA labor.

39. In pointing out the background of this demand, Mr. Gleason stated that the ILA work force in the Port of New York during the period 1968 to 1974 had been decimated by the effects of innovation. In this regard he pointed out that the almost 24,000 Longshoremen who had labored almost 40 million manhours in the contract year 1967/68 had been reduced to 13,000 longshoremen in the Port of New York who had labored only approximately 24.5 million hours in the contract year 1972/73 (Exhibit 2). He also complained bitterly that the Rules on Containers were not being lived up to by the employer members of CONASA, the steamship companies and the stevedores to the full extent that they should be lived up to and that certain consolidators or non-vessel operating common carriers ("NVO's"), had

conspired with others to circumvent the Rules on Containers by various devious devices. He stated that the ILA could not continue to give up work opportunities to innovation in areas where the work had been traditionally performed by the ILA and where it was of the nature that could just as easily be performed in the piers and terminals as it had traditionally, than at inland installations within a 50-mile area of each port by outside groups.

40. CONASA's initial position was that all containers should be permitted to move without any restriction by the ILA. The mere making of this demand led to almost a complete breakdown of the negotiations at that point. The ILA immediately rejected any such position; said it was a regression; that the ILA could not tolerate it; and that the ILA would not be pressured out of business; and, that the stated desires of the ILA for a contract without a strike should not be taken as any sign of weakness. He stated that if CONASA was to take any position of that type, that a strike would be certain and assured.

41. As a result of the diametrically opposed positions of the parties at the first negotiating session in March, 1974, no further formal meetings were held until June, 1974. However, during the interim period, various committees of ILA and CONASA, as well as NYSA, met with the ILA seeking to find a means to settle and resolve the container issue. The desire of the shipping industry was to permit shippers as much flexibility as possible without, at the same time, causing a certain work stoppage. The negotiations had been entered into with publicly stated declarations by both the industry and labor that the shippers need not have any fear of a work interruption in October, 1974 as had been the unfortunate history for some 30 years prior thereto.

42. It appeared to the members of CONASA, as well as the members of the various shipping associations in the North Atlantic, that the container issue would have to be resolved and resolved on a fair, equitable and proper basis if progress was going to be made in the negotiations. Therefore, a median position between that of the ILA

and that of CONASA would have to be found. Many proposals were discussed and analyzed. In exploring all of the various alternatives, and various other methods which might be used to protect the work opportunities and job opportunities of the ILA and its workers, the parties kept on coming back and back again to the same rules which had been in existence from 1959 through the time of the negotiations.

43. The formal negotiations between CONASA and ILA commenced at the Di Lido Hotel in Miami Beach, Florida on June 11, 1974. On each and every day, as well as evening and night, from June 11 right to the end of the negotiations on June 21, 1974, the major issue and sometimes the only issue separating the parties was again this issue of containerization. During the course of these negotiations the discussions continued almost without end. Drafts, redrafts, attempts at solutions all proved unavailing. The parties finally realized that the only way that progress could be made was to continue the Rules which each of them had found to be fair and equitable. These Rules were the same Rules that had been in effect since 1959 and had been codified in 1968 and accepted in their totality by CONASA and ILA in 1971.

44. The parties then turned their attention to the simplification of the Rules and their redrafting and revision for the purposes of clarity and better understanding. It was decided by the parties to incorporate Interpretive Bulletin No. 1, the so-called Dublin Rules (Exhibit 16) into the 1974-77 Rules in order to assure the effective implementation of the Rules and to provide the means to restrain and proscribe violations of the Rules. The final agreement was reached on the 1974-77 Rules on Containers in the same form as they existed for years (See Exhibit I to General Counsel's Exhibit 3). The execution of the 1974-77 Rules on Containers did not put to rest the ILA's continuing complaint that the steamship carriers were violating the contract. In late March, 1975, the ILA announced its intention to exercise its right to reopen the Rules because of its claim that the carriers were not abiding by their contractual commitments. On April 28, 1975, the

ILA unilaterally suspended the Rules and began to strip all containers in all North Atlantic Ports with the exception of shippers' loads. This job action continued for almost a month during which intensive negotiations were conducted between CONASA and ILA to settle the disputes. Finally, on May 30, 1975, the parties resolved their differences with the execution of the clarified and restated 1974-77 Rules on Containers (Exhibit J to General Counsel's Exhibit 3). Containerization, however, continues to this day to be a hotly contested and complex issue in longshore labor relations. The current collective bargaining negotiations for a new contract to commence October 1, 1977 are stalemated. The ILA is now engaged in a strike against all containership carriers from Maine to Texas. Containerization and its effects are the critical issues separating the parties.

L. *History of Litigation*

45. The Rules were first made the subject of litigation in 1970 when the United States Court of Appeals for the Second Circuit upheld their enforcement as valid work preservation rules under the antitrust laws. *Intercontinental Container Corp.* v. *New York Shipping Ass'n.*, 426 F.2d 884 (2d Cir. 1970). The plaintiff in the antitrust proceeding, namely, Intercontinental Container Transport Corp., also initiated related proceedings before the NLRB by filing unfair labor practice charges with the 22nd Region of the NLRB, claiming that the Rules constituted unlawful hot cargo agreements in violation of Section 8(e) of the Act and that their enforcement amounted to an illegal secondary boycott in violation of Section 8(b)(4)(ii)(B) of the Act (29 U.S.C. 158(b)(4)(ii)(B)).

46. The then Regional Director of the NLRB's 22nd Region, after investigation, dismissed all charges, finding that the Rules have "as its object, the preservation of work performed by longshoremen" (Exhibit 10). The Regional Director's dismissal of ICTC's charges was affirmed on appeal by the NLRB's General Counsel (Exhibit 11).

47. From 1970 when the Rules first received official sanction by the Second Circuit and then by the NLRB as valid work preservation provisions, until March, 1973, no adverse action was taken by any judicial or administrative tribunal questioning their continuing validity. On March 15, 1973, Sea-Land filed with the Federal Maritime Commission ("FMC") proposed amendments to its tariff between the East Coast and Puerto Rico. These amendments purported to incorporate and embody into the Sea-Land tariff some of the provisions of the Rules on Containers and the Dublin Rules. The FMC thereupon initiated Docket No. 73-17 for the purpose of investigating the lawfulness of the proposed tariff amendments under the Shipping Act and Intercoastal Shipping Act.

48. On June 1, 1973, while the FMC proceeding was pending, unfair labor practice charges were filed by a consolidator in the New York to Puerto Rico trade, namely, Consolidated Express, Inc. ("CEI") against NYSA and ILA with the 22nd Region of the NLRB contending, as ICTC had previously unsuccessfully contended, that the Rules were violative of Sections 8(e) no adverse action was taken by any judicial or administrative and 8(b)(4)(ii)(B) of the Act. The NLRB's Acting Regional Director thereupon obtained a preliminary injunction under Section 10(1) of the Act (29 U.S.C. 160(1)) prohibiting the enforcement of the Rules solely against CEI. *Balicer* v. *International Longshoremen's Association AFL-CIO and New York Shipping Association, Inc.*, 364 F. Supp. 205 (D.N.J.) aff'd without opinion, 491 F.2d 748 (3d Cir. 1973).

49. On November 2, 1973, similar unfair labor practice charges were filed by another consolidator, namely, Twin Express, Inc. ("Twin"). A similar limited injunction was obtained prohibiting the enforcement of the Rules against Twin. *Balicer* v. *ILA and NYSA*, 86 LRRM 2559 (D.N.J. 1974) (not officially reported). The issuance of this second preliminary injunction was not appealed. Both CEI's and Twin's charges were then made the subject of consolidated NLRB complaint proceedings before the NLRB's Administrative Law Judge Arnold Ordman.

50. On August 2, 1974, while the NLRB proceeding before Judge Ordman was pending, and after its acquisition of Puerto Rican services of Sea-Land, Seatrain Lines, Inc. and TTT, the only carriers in the New York to Puerto Rico trade, PRMSA filed a tariff, with the FMC, effective September 16, 1974. PRMSA's tariff incorporated and embodied the 1971-74 CONASA-ILA Rules on Containers and the Dublin Rules. The FMC thereupon initiated Docket No. 74-40 to investigate the lawfulness of the proposed PRMSA tariff under the Shipping Act and Intercoastal Shipping Act. The Commission consolidated Docket No. 74-40 with the preexisting Docket No. 73-17, which involved the then amended tariff of Sea-Land which had been cancelled upon PRMSA's entry into the Puerto Rican trade. On February 14, 1974, PRMSA filed amendments to its Puerto Rican tariff, to be effective March 16, 1975, which replaced the previously incorporated 1971-74 Rules on Containers. PRMSA embodied in its Puerto Rican tariff, in replacement thereof, certain of the Rules on Containers appearing in the 1974-77 CONASA-ILA Collective Bargaining Agreement (Exhibit I to General Counsel's Exhibit 3). On March 14, 1975, the FMC ordered that PRMSA's amended tariff be included within Docket No. 74-40 for investigation.

51. While the FMC proceeding was pending, the NLRB's Administrative Law Judge Arnold Ordman issued his initial decision on December 9, 1974, upholding the legality of the Rules as valid and proper work preservation clauses under national labor law. On December 4, 1975, the NLRB reversed the Administrative Law Judge's decision, concluding that the Rules violated Section 8(e) and that the ILA had engaged in an illegal secondary boycott against, *inter alia*, Respondent NYSA, violative of Section 8(b)(4)(i)(B). *International Longshoremen's Assn. and New York Shipping Ass'n., Inc.* (*Consolidated Express, Inc. and Twin Express*), 221 NLRB No. 144 (1975). NYSA and ILA sought review of the NLRB's determination before the Second Circuit. In December, 1975, the ILA advised NYSA of its deci-

sion not to enforce the Rules in the Port of New York. A copy of NYSA's report to its members of the ILA's decision is annexed hereto as Exhibit 17.

52. On June 29, 1976 the Second Circuit affirmed the NLRB's decision. *International Longshoremen's Association* v. *NLRB*, 537 F.2d 706 (2d Cir. 1976). A petition for rehearing *en banc* was denied on August 6, 1976, and the judgment of the court of Appeals was entered on September 9, 1976. On January 10, 1977, the Supreme Court denied *certiorari*, 50 L.Ed. 2d 753 (1977). A petition for rehearing was denied on February 28, 1977. On February 3, 1977, NYSA advised Region 22 of the NLRB that it had fully complied with the order of the NLRB as enforced by order of the Second Circuit. A copy of NYSA's advice to the NLRB is annexed hereto as Exhibit 18. Thus, since December, 1975, the Rules have not been implemented in the Port of New York against Dolphin, SJF or any other consolidator.

53. The instant proceeding was instituted on May 6, 1975 when Dolphin Forwarding, Inc. filed a Section 8(e) charge against NYSA and ILA and a Section 8(b)(4)(ii)(B) charge against ILA. San Juan Freight Forwarders, Inc. followed suit on May 7, 1975 when it filed a Section 8(b)(4)(ii)(B) charge against ILA. On August 14, 1975, the Regional Director of Region 22 petitioned for a Section 10(1) preliminary injunction in the United States District Court for the Southern District of New York. On September 18, 1975, U.S.D.J. Lloyd F. MacMahon entered an order denying the petition for a preliminary injunction and staying and holding the proceeding in abeyance until entry of the final determination by the NLRB in the proceeding involving Consolidated Express, Inc. and Twin Express, Inc., *Danielson* v. *International Longshoremen's Ass'n.*, —— F. Supp. —— (S.D.N.Y. No. 75 Cir. 4027, September 18, 1975). On March 10, 1976, three months after the NLRB's decision on December 4, 1975 in the Consolidated and Twin proceeding, a consolidated complaint is-

sued herein. No action has been taken to reactivate the petition for a preliminary injunction.

JOHN M. HAYNES
/s/ John M. Haynes

Sworn to before me this
12th day of October, 1977

/s/ Jack Silverman
JACK SILVERMAN
Notary Public

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

Case Nos. 2-CC-1364, 2-CE-75, 2-CC-1365

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

NYSA's DIRECT CASE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MICHAEL J. NICHOLAS, being duly sworn, deposes and says:

I have been employed by Respondent, New York Shipping Association, Inc. ("NYSA"), since January 1, 1975, as its Contract Administration Office. My functions and duties specifically and exclusively involve the administration, policing and enforcement of the provisions of the collective bargaining agreement between NYSA and International Longshoremen's Association, AFL-CIO ("ILA"). Prior to my employment with NYSA I had been employed since 1962 by Sea-Land Service, Inc., first in its Security Department and later as the manager of its waterfront terminal and cargo handling operations in the Port of New York. I am fully familiar with the facts and circumstances set forth in this affidavit which is being submitted as part of NYSA's direct case.

1. The Rules on Containers, which are the subject of this proceeding, are designed to preserve to ILA dockworkers the work of loading and unloading less-than-trailerload ("LTL") cargo, originating from or destined to points within 50 miles of the Port of New York into and out of ocean containers. In this way, ILA longshoremen receive some limited preservation of work functionally equivalent to the historical work performed by them at waterfront piers and terminals before the advent of containerization. The Rules were designed to cushion in part the impact of the innovative cargo handling techniques of containerization upon the job opportunities of ILA longshoremen. They render to the ILA that work which, absent containerization, would come to the piers and waterfront terminals. This cargo, which traditionally was trucked to the piers to be loaded or unloaded for ocean transport could just as easily continue to be brought to the piers to be handled by ILA labor. This portion of the ILA's traditional work jurisdiction would thus be maintained and preserved. Containerization which the ILA permitted the ocean carrier-employers of its members to develop and nurture makes it possible for this traditional ILA work to be shifted from the piers to warehouses and other inland consolidation and deconsolidation facilities. This shift of work from the piers to inland facilities is not based on mere surmise. In the Port of New York alone, there are tens of export and import warehouses and distribution stations situated within the Port area that are now in a position to siphon away from the piers all of the local consolidation and deconsolidation work which had been performed at the piers exclusively by ILA labor.

2. The impact of this siphoning of work from the piers upon the job opportunities of ILA longshore employees is potentially catastrophic. Since its advent in the late 1950's, containerization has drastically reduced the work opportunities of ILA longshoremen. This reduction occurred even though the ILA enjoyed the minimal protection of the Rules. In the Port of New York alone, in a period of 18 years, there has been a loss of more than 20 million man hours of work per year. In 1958 when

containers were of minor significance in the Port of New York, 12 million long tons of general cargo were handled utilizing 42,835,226 ILA man hours. By 1976, although more cargo was moved (approximately 19.5 million long tons), only 19,694,632 man hours of ILA labor were required (See Exhibit 2 to Haynes Affidavit). During that period the number of longshoremen was reduced from 31,629 in 1958 to approximately 12,000 in 1976.

3. The effect of containerization upon the ILA's work jurisdiction will be further exacerbated by any decision invalidating the Rules. All local cargo, which has been handled at the piers, will be loaded and unloaded for ocean transport away from the piers at inland consolidation and deconsolidation stations. This cargo—approximately 20% of the containerized cargo moving through the Port of New York—totals approximately 3 million long tons per year. Moreover, other pier locations, not directly involved with the Rules, will shift inland. For example, the physical transfer of cargo from rail cars to ocean containers, which in the past has been traditionally performed at the piers, will shift to the rail yards.

4. The invalidation of the Rules in the Port of New York alone will mean the loss of 2,000 longshore jobs. There are presently in the Port of New York 13 expansive, modern container terminals whose total capital investment exceeds 700 million dollars. At these waterfront terminals most of the more than 100 carrier, stevedore and other maritime members of NYSA engage in operations. At these container terminals there are large enclosed facilities having a total area in excess of 2,200,000 square feet that have been constructed exclusively for the consolidation and deconsolidation of containers. The consolidation and deconsolidation functions require a permanent labor force of approximately 1,000 longshoremen who engage in the physical loading and discharging of cargo into and out of ocean containers. There are an additional 1,000 ILA employees who perform terminal functions directly related to the consolidation and deconsolidation work. These other ILA employees are comprised of other ILA longshore crafts, including checkers, coopers (cargo repairmen), delivery and receiving clerks,

carpenters, maintenance men, mechanics, etc. who are involved in the overall physical movement of cargo from the tailgate of the delivery trucks to the stowage on board ocean vessels. If these 2,000 ILA jobs were eliminated, these men would then be entitled under the NYSA-ILA labor contract to receive their full Guaranteed Annual Income ("GAI") *i.e.*, a full year's wage, since no work would be available for them. Currently the cost of GAI in the Port of New York exceeds $51 million dollars. If an additional 2,000 men were to receive full GAI it would add another 40 million dollars to the already burgeoning GAI cost. In addition, it would erode any GAI cost savings derived from attrition of current GAI recipients. Under the tonnage assessment formula in effect for the Port of New York, monies contributed by NYSA direct employers of ILA labor are disbursed first to satisfy GAI obligations. The stability and actuarial soundness of the fringe benefit funds, including the pension and welfare funds, thus depend upon the ability to control and maintain the level of GAI costs. Past history has established that any increase in the tonnage assessment rate is shortly followed by a loss of cargo normally moving through New York, increased GAI costs because of attendant reduction in man hours of work and the necessity for further tonnage assessment increases. If the Rules are held invalid, the Rules will be of little consequence in controlling spiralling GAI costs with dire economic consequences for the Port of New York.

5. These drastic effects have already been set in motion as a result of the NLRB's decision in *International Longshoremen's Ass'n* (*Consolidated Express, Inc.*), 221 NLRB (1975), *enforced sub nom. International Longshoremen's Ass'n* v. *NLRB*, 537 F.2d 706 (2d Cir. 1976), cert. denied, 50 L.Ed. 2d 753 (1977). As each day passes, more and more consolidators and warehousemen are siphoning cargo away from the piers, not only in the Puerto Rican trade involved herein but in the larger North Atlantic and Far East trades. Already by March, 1977 more than 100 permanent ILA jobs in-

volving consolidation and deconsolidation functions were eliminated. It is expected that this erosion of work will continue at a progressively higher rate as additional LTL cargo is shifted from the piers to inland facilities. This is evident from the daily hiring statistics which show that hirings of longshore employees in the Port of New York were substantially less in 1977, averaging about 700 fewer jobs per day than in 1976. Unless the Rules are upheld, the entire framework of labor relations in the longshore industry may be radically and significantly altered. The longshore industry will be faced—as it presently is in the labor negotiations now being conducted along the East and Gulf Coasts of the United States—with an almost insurmountable task in finding a solution to the serious problems wrought by containerization.

/s/ Michael J. Nicholas
MICHAEL J. NICHOLAS

Sworn to before me this
13th day of October, 1977

/s/ Martin Lowenstein
MARTIN LOWENSTEIN
Notary Public
State of New York
No. 31-4617693
Qualified in New York County
Commission Expires March 30, 1979

UNITED STATESOF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

Case Nos. 2-CC-1364, 2-CE-75, 2-CC-1365

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM O. GOHLKE, residing at 59 Tam-O-Shanter Drive, Mahwah, New Jersey, 07430 (201-529-3477), being duly sworn deposes and says:

1. I am submitting this statement at the request of the International Longshoremen's Association, AFL-CIO ("ILA"), one of the Respondents in the above-captioned proceeding. To the best of my knowledge and understanding I am not an involved party and I am hereby testifying to certain events in my background and experience as an employee or officer of Sea-Land Services, Inc. ("Sea-Land") and Seatrain Lines, Inc. ("Seatrain").

2. I am presently the owner of Transocean Transport Inc. of Mahwah, New Jersey, a steamship sales agency company. From 1959-1962 I was a director and employee of Sea-Land. In 1962 I resigned and became a consultant to the Puerto Rican government respecting transportation activities. From 1963 through 1973 I was an officer and employee of Seatrain. During my tenure with Sea-Land and Seatrain I was primarily engaged

in the marketing and sales activities of those carriers. In those capacities I variously resided in Puerto Rico and the continental United States so I can testify first hand respecting the following.

3. While at Sea-Land's Port Newark facility I was able to observe and become familiar with the stuffing and stripping facilities conducted by Sea-Land of cargo handled for Sea-Land's customers. Sea-Land also received Less-Than-Container-Load ("LTL") containers which were not handled by its longshoremen at stuffing and stripping shed Building 290. In my various capacities I learned that these containers were not stripped by Sea-Land stevedore employees. Nonetheless, when loaded aboard the Sea-Land vessels they carried Sea-Land seals which were affixed at some point between receipt of the LTL containers and recording of the seals by the checker. This would have to have been done with the explicit knowledge of Sea-Land. Otherwise, a charge would have to have been recorded for the labor involved with stuffing and stripping the container. To the best of my recollection this practice took place on a daily basis in 1961 and 1962. At that time I was aware that such practices were contrary to the existing agreement as I understood it between the ILA and NYSA respecting the handling and processing of the LTL containers. My understanding at that time, as a matter of general knowledge among Sea-Land personnel and its directors, was that all LTL cargo was required to be stuffed by ILA longshoremen at the pier. Among the foregoing containers on which the seals had obviously been changed without re-handling of their contents by the longshoremen were consolidated containers of Valencia Baxt, a large off-pier consolidating firm.

4. To my knowledge, at that time Sea-Land's policy was to offer consolidators, such as Valencia Baxt and others, an FAK rate which encouraged them to collect and process LTL cargo. In my opinion, Sea-Land indulged in this practice to by-pass the ILA labor employed by Sea-Land.

5. When I moved over to Seatrain it was apparent that Seatrain did not have facilities for stuffing and

stripping containers all of which it owned. Seatrain was located in Edgewater, New Jersey and did not employ any stuffing and stripping employees to consolidate LTL cargo. Instead it was my practice as director of marketing, as well as the practice of the employees under my direction, to refer all requests of customers to handle their less-than-container loads to off-pier consolidators such as, for example, Collella Brothers, Puerto Rican Forwarding and Transloric. In this manner Seatrain was able to compete with Sea-Land in the LTL end of the business. Thus, Seatrain, like Sea-Land, furnished the consolidator with its containers which they (consolidators) consolidated with the cargo of their customers, for whom they also handled full-shipper-load containers. When those containers were received at the pier, Seatrain seals were affixed to them and they were lifted aboard Seatrain vessels in the same manner as occurred in Sea-Land.

6. In the course of my employment with Seatrain I was aware that Dolphin Forwarding, Inc. ("Dolphin"), a Massachusetts concern, was using Seatrain containers to transport cargo which it or its agents stuffed into these containers at various points in Massachusetts, New York, New Jersey and other points in transit. These containers were received by Seatrain and handled in the manner described immediately above. To my knowledge, numerous Seatrain customers were referred by me and subordinates to Dolphin to handle their LTL cargo. Seatrain issued Dolphin booking numbers, as were reflected on Seatrain's records. To the best of my recollection this practice took place from 1964 throughout the balance of my employment with Seatrain. It was quite apparent to me that though the bills of lading and other documentation suggested that the Dolphin cargo was booked as having an originating point in Massachusetts, this was not the case. The recordings of the turnaround of containers and related equipment issued on Dolphin bookings clearly showed that insufficient time elapsed between the issuance and return of the equipment to permit the containers to be transported to Massachusetts and back. This left the unmistakable impression that the loading of the containers had to have

taken place in the New York-New Jersey proximity of the Seatrain operation. It was not Seatrain's concern or my concern as an official of Seatrain to inquire into this practice. Seatrain's and my objective was to obtain business and transporting containers to and from Puerto Rico. Inasmuch as Seatrain did not have facilities and was apparently unwilling to invest in facilities for stuffing and stripping LTL cargo, there was no question in my mind that the above-described practice respecting LTL cargo handled by longeshoremen contravened the understanding between Seatrain and the ILA whereby ILA longshoremen were to handle—that is, stuff and strip—cargo moving in Sea-Land containers. Parenthetically, I note that these practices were encouraged by Seatrain to the point that Puerto Rican Forwarding was designated as a Seatrain facility in the immediate New York-New Jersey area by Seatrain. Finally, it was Seatrain's consistent practice to load only its own containers aboard its vessels throughout the period that I worked for that carrier. Accordingly, any shipper including consolidator's such as Dolphin would have had to use Seatrain-owned containers in order to make their operation possible through Seatrain. This was the identical case respecting Sea-Land's operations while I was employed by that carrier, i.e., it only loaded its own Sea-Land-owned containers.

7. The foregoing is the truth to the best of my personal knowledge and recollection.

/s/ William O. Gohlke
WILLIAM O. GOHLKE

Sworn to and subscribed before me
this 19th day of October, 1977.

/s/ Herzu S. Eisenstadt
HERZU S. EISENSTADT
Notary Public
State of New York
No. 24-4514648
Qualified in Kings County
Commission Expires March 30, 1979

SUPREME COURT OF THE UNITED STATES

No. 79-1082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

ORDER ALLOWING CERTIORARI

Filed January 21, 1980

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

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Supreme Court, U. S.
FILED
JAN 14 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1035

NEW YORK SHIPPING ASSOCIATION, INC. and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

HOUFF TRANSFER, INC., TIDEWATER MOTOR TRUCK ASSOCIATION and DOLPHIN FORWARDING, INC.,
Intervenor-Respondents

No. 79-1036

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

HOUFF TRANSFER, INC., DOLPHIN FORWARDING, INC., and TIDEWATER MOTOR TRUCK ASSOCIATION,
Intervenor-Respondents.

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
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v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, et al.,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1035

NEW YORK SHIPPING ASSOCIATION, INC. and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

HOUFF TRANSFER, INC., TIDEWATER MOTOR TRUCK ASSOCIATION and DOLPHIN FORWARDING, INC.,
Intervenor-Respondents.

No. 79-1036

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

HOUFF TRANSFER, INC., DOLPHIN FORWARDING, INC., and TIDEWATER MOTOR TRUCK ASSOCIATION,
Intervenor-Respondents.

No. 79-

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, et al.,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

International Longshoremen's Association, AFL-CIO ("ILA"), petitioner in No. 79-1036 above and respondent in No. 79- above, submits this brief, pursuant to Rule 24 of the Rules of this Court, in support of the petition for a writ of certiorari to the Court of Appeals for the District of Columbia Circuit filed by the Solicitor General of the United States on behalf of the National Labor Relations Board in No. 79- above.

Prior to the Solicitor General's filing on behalf of the Board, the ILA, on January 2, 1980, had filed its own petition (No. 79-1036) seeking review of the same decision of the District of Columbia Circuit. New York Shipping Association, Inc. ("NYSA") and Council of North Atlantic Shipping Associations ("CONASA") had also filed a petition (No. 79-1035) on December 31, 1979, seeking a similar writ of certiorari in the same matter.

Although the ILA does not agree with the factual and legal assertions in the Solicitor General's petition that go to the merits of the case, it concurs that the petition should be granted for the reasons set forth in its own petition and that of NYSA and CONASA.

Petitioners on all the pending petitions agree that review by this Court is necessary to resolve a manifest conflict between circuits which involves the interpretation and effect of both a labor statute of national application and earlier decisions by this Court. This conflict, which has widespread collateral ramifications, subjects different jurisdictions, and sometimes the selfsame ports, to diametrically opposed rulings in frustration of the expressed will of Congress that national labor law be uniformly applied. Until this Court renders a decision, the law is so unsettled in the longshore industry in the eastern half of the United States as to virtually preclude meaningful collective bargaining in forthcoming negotiations necessary to avert the widespread labor unrest which has marked the industry in the past, all to the detriment of the national economy.

CONCLUSION

For the foregoing reasons the petitions for writs of certiorari should be granted.

Dated: New York, New York
January 8, 1980

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1035

NEW YORK SHIPPING ASSOCIATION, INC., *et al.*,
Petitioners,

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Respondents.

No. 79-1036

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *et al.*,
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No. 79-

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR NEW YORK SHIPPING ASSOCIATION, INC. AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS

(Petitioners in No. 79-1035 and Respondents in No. 79-)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1035

NEW YORK SHIPPING ASSOCIATION, INC., *et al.*,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents.

No. 79-1036

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents.

No. 79-

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR NEW YORK SHIPPING ASSOCIATION, INC. AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS

This brief is filed by New York Shipping Association, Inc. ("NYSA") and Council of North Atlantic Shipping

Associations ("CONASA"), pursuant to Rule 24 of the Rules of this Court, to advise the Court that they support the petitions filed by the International Longshoremen's Association, AFL-CIO ("ILA") in No. 79-1036 and by the Solicitor General on behalf of the National Labor Relations Board in No. 79- .

Although NYSA and CONASA do not endorse the factual statements and legal arguments contained in the Solicitor General's petition, they do agree, for the reasons advocated in their petition in No. 79-1035, that review of the decision of the District of Columbia Circuit in this case is warranted. Review will enable this Court (1) to adjudicate the exceptional questions of national importance involving the doctrine of work preservation; and, (2) to reconcile the disruptive intercircuit conflict that now prevails on the question of the legality of the collectively bargained Rules on Containers under federal labor law.

Contrary to the contention of the Solicitor General, however, NYSA and CONASA respectfully submit that the decision of the District of Columbia Circuit in this case is eminently sound, and should be upheld.

NYSA and CONASA concur in the Solicitor General's appraisal that, unless the uncertainty and confusion created by the discord in the circuits is speedily resolved, there is grave danger that the forthcoming 1980 negotiations for a new labor contract in the longshore industry on the Atlantic and Gulf Coasts "will, as they have in the past, result in industrial strife over the containerization question." It is thus within the national interest that the Court entertain review of this case.

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be granted.

Dated: New York, New York
January 7, 1980

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NEW YORK SHIPPING ASSOCIATION, INC., *et al.*,
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v.
NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents.
No. 79-1035

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents.
No. 79-1036

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
Respondents.
No. 79-1082

TIDEWATER MOTOR TRUCK ASSOCIATION,
Petitioner,
and
NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents,
v.
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
Respondents.
No. 79-1099

DOLPHIN FORWARDING, INC.,
Petitioner,
v.
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
Respondents.
No. 79-

HOUFF TRANSFER, INC.,
Cross-Petitioner,
and
NATIONAL LABOR RELATIONS BOARD, *et al.*,
(Petitioner in No. 79-1082),
v.
NEW YORK SHIPPING ASSOCIATION, INC., *et al.*,
(Petitioners in Nos. 79-1035 and 79-1036).
No. 79-

ON PETITIONS AND CROSS-PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF FOR NEW YORK SHIPPING ASSOCIATION, INC. AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1035

NEW YORK SHIPPING ASSOCIATION, INC., *et al.*,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents.

No. 79-1036

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents.

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
Respondents.

No. 79-1099

TIDEWATER MOTOR TRUCK ASSOCIATION,
Petitioner,

and

NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
Respondents.

No. 79-

DOLPHIN FORWARDING, INC.,
Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,
Respondents.

No. 79-

HOUFF TRANSFER, INC.,
Cross-Petitioner,
and
NATIONAL LABOR RELATIONS BOARD, *et al.*,
(*Petitioner in No. 79-1082*),
v.
NEW YORK SHIPPING ASSOCIATION, INC., *et al.*,
(*Petitioners in Nos. 79-1035 and 79-1036*).

ON PETITIONS AND CROSS-PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF FOR NEW YORK SHIPPING ASSOCIATION, INC. AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS

This brief is filed by New York Shipping Association, Inc. ("NYSA") and Council of North Atlantic Shipping Associations ("CONASA"), pursuant to Rule 24 of the Rules of this Court, to supplement their earlier brief filed in Nos. 79-1035, 79-1036 and 79-1082. NYSA and CONASA hereby advise the Court that, in addition to supporting the petitions filed by the International Longshoremen's Association, AFL-CIO in No. 79-1036 and by the Solicitor General on behalf of the National Labor Relations Board in No. 79-1082, they also do not oppose the other petitions for certiorari submitted in Nos. 79-1099, *et al.*

Although NYSA and CONASA do not endorse the factual statements and legal arguments contained in these other petitions, they do agree, for the reasons advocated in their petition in No. 79-1035, that review of the decision of the District of Columbia Circuit in this case is warranted.

However, contrary to the contentions contained in these other petitions, NYSA and CONASA respectfully submit that the decision of the District of Columbia Circuit in this case is eminently sound, and should be upheld.

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be granted to review the judgment entered in this case on September 25, 1979 by the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

Dated: New York, New York
January 16, 1980

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Of Counsel,

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In the Supreme Court of the United States

OCTOBER TERM, 1979

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-83a) is not yet officially reported. The decisions and orders of the National Labor Relations Board (Pet. App. 90a-109a, 110a-184a; A. 465-468) are reported at 231 N.L.R.B. 351 and 236 N.L.R.B. 525.

JURISDICTION

The judgment of the court of appeals (Pet. App. 84a-86a) was entered on September 25, 1979. The Board's petitions for rehearing and rehearing en banc were denied on December 13, 1979 (Pet. App. 87a-89a). The petition for a writ of certiorari was filed on January 10, 1980, and was granted on January 21, 1980 (A. 635). This Court's jurisdiction rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board properly concluded that contractual provisions adopted by the union and the employer-organizations to deal with containerization in the shipping industry enlarged, rather than preserved, work opportunities for employees represented by the union, and that such provisions therefore violated Section 8(e) of the National Labor Relations Act and union action to enforce them violated Section 8(b)(4)(B) of the Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (29 U.S.C. 151 *et seq.*) are as follows:

1. Section 8(b), 29 U.S.C. 158(b), provides in pertinent part:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> 4(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where * * * an object thereof is:
>
> * * * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * * *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful * * * any primary strike, or primary picketing; * * *

2. Section 8(e), 29 U.S.C. 158(e), provides in pertinent part:

> It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcable and void * * *

STATEMENT

Introduction

The controversy in this case focuses on the response of the longshoremen's union and the shipping industry to containerization—a technological innovation

that fundamentally changed not only the method for loading ships, but also the method by which inland shippers transport their cargo to and from the docks.

Containers are large metal boxes, ranging in length from 20 to 40 feet, which hold up to 30,000 pounds of all types of freight. They can be affixed to a truck chassis and transported unopened to and from the pier. Before the advent of containerization, trucks delivered the goods of shippers in loose form to the dock site. Longshoremen, represented by respondent International Longshoremen's Association (ILA), then loaded the goods aboard vessels. Similarly, longshoremen unloaded incoming vessels and placed their cargoes on the pier for pick-up by truckers.

After the introduction of containers in the shipping industry, shippers began to load (or stuff) containers at their place of business or at the terminal of a company offering such services.[1] Shippers then trucked the containers directly to the pier for loading aboard ship without additional handling of their cargo. Similarly, shippers arranged to have their containerized cargo unloaded from ships and trucked either to an inland terminal or to the ultimate recipient for unloading (stripping).

Shippers who did not have a sufficient quantity of goods to fill a container avoided having their goods delivered to the pier in loose form—with the attendant risk of theft, damage and delay—by employing

[1] Containers of this kind, holding the goods of one beneficial owner, are called full shipper's loads (FSL) (A. 9, 20, 43, 57, 67, 92, 126, 140, 183, 215).

the services of a freight consolidator. The consolidator combined the goods of various shippers into a container at its off-pier terminal and transported the container to the pier.[2] In addition, consolidators trucked incoming containers of cargo to their off-pier terminals, where they stripped the containers, sorted the cargo, and loaded the cargo onto trucks for delivery to customers.

Freight consolidators ordinarily operate no transportation equipment of their own except for pick-up and delivery equipment. Consolidators contract with equipment operating carriers, including truckers and steamship lines, for the actual transportation of the goods of their shipper-customers. See Comment, *Intermodal Transportation and the Freight Forwarder*, 76 Yale L.J. 1360, 1362 (1967). A consolidator who acts as a carrier by arranging for the transportation of goods from port to port is designated a non-vessel operating common carrier by water (NVOCC), and is regulated by the Federal Maritime Commission (FMC) (A. 473, 490, 511-516, 538-539). A report of the FMC describes NVOCCs as follows (*Preliminary Staff Report on Non-Vessel Operating Common Carriers by Water* 2-4 (Dec. 8, 1970)):

> The NVOCC is a carrier who holds himself out to the public to provide through transportation, a portion of which moves by water, and

[2] The goods of two or more shippers that are transported in a single container are known as less-than-container-load (LCL) or less-than-trailer-load (LTL) cargo (A. 9, 108, 139-140).

who assumes responsibility for the through transportation, including the water portion, although not owning or controlling the vessel by which the water portion of the movement is effected.

* * * * *

The basic function of the NVOCC is the placing of several small shipments into one large container at one end of the movement and the removal of those shipments from the containers and distribution thereof at the other end. Because the NVOCC (at least in the Puerto Rican trade) pays a flat rate per container charge, but receives a per pound or per foot rate from the shipper, it has the incentive to load the containers as efficiently as possible. * * *

One of the most important benefits of the NVOCC service is one of coordination and control of the traffic. For example, a cargo may take three to four weeks to travel from Chicago to Mayaguez via separate carriers but with close coordination the NVOCC can achieve a seven day delivery. With this coordinated control over the shipment, a continuous movement is assured because the NVOCC maintains close liaison with the steamship companies regarding sailings, close-out times, dock conditions, and every fact relating to pickup and delivery of containers on the piers. The documentation system employed by the NVOCCs includes pre-notification to its destination terminal of the contents of each container arriving on the ship and thus containers preloaded for delivery can be moved directly from the pier on arrival to destination. * * *

In substance, the NVOCC acts as a common carrier by water. It publishes a tariff, quoting

through rates for the transportation offered, and issues to the shippers its own bill of lading. The NVOCC prepares waybills, bills of lading, and manifests for the underlying carrier. He collects the through charges, provides handling services, routes and traces shipments, settles claims, performs transfer services on interline shipments and actively solicits freight.

The present case involves two Board proceedings, consolidated on appeal, that consider some of the implications under the National Labor Relations Act of containerization.[3] The first ("Dolphin") concerns the handling of LCL cargo (see note 2, *supra*) in the Port of New York. The second ("Associated Transport") concerns the handling of FSL cargo (see note 1, *supra*) in the ports of Hampton Roads, Virginia, and Baltimore, Maryland. We describe the facts in each proceeding separately.

1. The Board's Findings of Fact

a. *The Port of New York (the "Dolphin" case)*

i. *Containerization and LCL Cargo*

Prior to World War II, gangs of longshoremen handled most solid cargo moving over the New York piers on a piece-by-piece or break-bulk basis. Then, as now, trucks delivered break-bulk cargo in loose form to the head of the pier. A clerk checked in each truck and directed it to a bay on the pier for un-

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[3] *International Longshoremen's Association, et al. (Associated Transport, Inc.)*, 231 N.L.R.B. 351 (1977), and *International Longshoremen's Association and New York Shipping Association, Inc. (Dolphin Forwarding, Inc.)*, 236 N.L.R.B. 525 (1978).

loading. The driver placed the cargo on the truck's tailgate, a checker tallied it, and a freight handler moved it from the tailgate to a pre-assigned point on the pier. Longshoremen then stacked the cargo on wooden pallets and moved it by fork-lift to the side of the ship. Finally, longshoremen attached a sling or hook to the cargo pallet and lifted it into the ship's hold for stowage. The opposite process applied to cargo from incoming ships. Longshoremen broke down and sorted the cargo and truckers picked it up at the pier for delivery to the ultimate consignee (A. 109-114, 134-135, 150, 158, 168, 210-211, 229).

In the late 1940's longshoremen began to stuff loose cargo sent directly to the piers into large wooden boxes and metal containers for shipment on vessels carrying cargo to and from Puerto Rico (A. 115-116, 150). During this same period, consolidators (employing workers not represented by ILA), who traditionally had solicited, received and combined small shipments of goods from their own customers and transported those goods from their off-pier facilities to the piers, also began to stuff their customers' goods into containers and truck them to the piers for loading aboard ship. See *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc.)*, 221 N.L.R.B. 956, 959-960 (1975) (hereinafter called *Conex*).[4]

[4] Prior to containerization, consolidators, operating at their own terminals, would combine goods from a number of customers that were destined for shipment on a particular vessel. These goods would be stacked together and trucked to the pier. (A. 111, 131, 145, 210). Containerization modified this procedure by enabling the consolidator to place all such goods destined for a particular ship in a single container prior to delivery to the pier (A. 211) (*Conex, supra*, 221 N.L.R.B. at 956, 959).

In the decade between the mid-1950's and the mid-1960's, steamship companies began to use fully containerized ships that were specifically constructed to carry 20-, 35-, and 40-foot long metal containers (A. 117, 135, 212). Thereafter, greatly increased amounts of cargo passing in and out of the Port of New York moved in these containers (A. 118, 135, 154, 509-512 (*Conex, supra*, 221 N.L.R.B. at 957, 964, 968).

As the use of containerized vessels increased, consolidators delivered more cargo to the piers in containers. Consolidators also began to pick up containers arriving on inbound ships and stripped them at their off-pier facilities prior to delivery to their customers. *Conex, supra*, 221 N.L.R.B. at 956-957. During this period, longshoremen continued to stuff containers at the piers. However, they stuffed only cargo sent directly to the piers in loose form by the steamship companies' customers. *Conex, supra*, 221 N.L.R.B. at 959 n.16, 973 n.8.

ii. *The Rules on Containers*

In 1959, ILA and the New York Shipping Association (NYSA)[5] negotiated a collective-bargaining

[5] NYSA is an organization of employers, including steamship and stevedoring companies, who transport cargo and passengers by water into and out of the Port of New York. NYSA conducts collective bargaining negotiations with the ILA on behalf of its members. *Conex, supra*, 221 N.L.R.B. at 957. Since 1970, the Council of North Atlantic Shipping

agreement that expressly recognized the right of NYSA members "to use any and all type of containers without restriction or stripping" by ILA labor at the pier (A. 118-122). In return, NYSA agreed to contribute certain royalty payments on "containers which are loaded or unloaded away from the pier by non-ILA labor" (A. 142, 152, 155, 168).[6] The agreement allocated to ILA only the work of stuffing and stripping the cargo of the steamship lines' own customers, not the cargo of shippers who utilized the services of off-pier consolidators or freight forwarders. *Conex*, *supra*, 221 N.L.R.B. at 957, 960, 968-969. See also *Balicer* v. *International Longshoremen's Association*, 364 F. Supp. 205, 222 (D. N.J. 1973).

In 1967, ILA demanded in collective-bargaining negotiations with NYSA that, in the future, longshoremen stuff and strip *all* containers crossing the New York piers (A. 123). In February 1969, after a lengthy strike, the parties agreed upon detailed provisions governing containerization—the "Rules on Containers"—which since then have appeared, as

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Associations (CONASA), a multi-employer bargaining association representing shipping associations (including NYSA, Steamship Trade Association of Baltimore (STA), and the Hampton Roads Shipping Association (HRSA)), has bargained with ILA on a master-contract basis over terms and conditions of employment of longshoremen employed by members of the employer organizations (A. 17, 89, 91, 94, 136).

[6] The royalty on containers stuffed or stripped away from the pier by non-ILA labor presently is $2 per gross ton, or $30 for a modern container holding 15 gross tons of cargo (A. 18, 95-96, 147-148, 150-151, 214).

modified, in every NYSA-ILA contract, and later in every CONASA-ILA contract (see note 5, *supra*) (A. 123).[7] The Rules on Containers provided that ILA-represented longshoremen must strip and restuff into empty containers all LCL cargo arriving in containers owned or leased by NYSA members and originating within 50 miles of the Port of New York. The Rules required this procedure even if the containers already had been stuffed off the pier by consolidators and thus were ready for immediate loading aboard a containership. Similarly, the Rules required that ILA labor strip all incoming LCL cargo carried in containers and destined for a point within 50 miles of the Port of New York. After this stripping operation, ILA labor would place the cargo loose on the pier, where it could be picked up by consolidators or other agents of shippers. If a steamship company failed to have longshoremen perform such work, the Rules required the company to pay liquidated damages into the Container Royalty Fund (App., *infra*, 3a-4a, 8a).[8] See *Conex*, *supra*, 221 N.L.R.B. at 957-959.

In January 1973, ILA and CONASA executed the "Dublin Supplement" to the Rules on Containers. Among other things, the Dublin Supplement sought to prevent evasion of the Rules by flatly forbidding steamship companies to supply empty containers to consolidators who sought to conduct business as they

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[7] The Rules (A. 139) appear in the Appendix to this brief, *infra*, 1a-13a.

[8] In 1970, the liquidated damages penalty was raised to its present level of $1000 per container (A. 240, 249).

had in the past (A. 267-268). See *Conex*, *supra*, 221 N.L.R.B. at 969-970. (App., *infra*, 4a-5a, 8a.)

iii. *Application of the Rules on Containers to Consolidators*

Dolphin Forwarding, Inc. (Dolphin) and San Juan Freight Forwarding, Inc. (San Juan) served as NVOCC consolidators (A. 473, 490, 527, 538, 540, 548-549). They solicited business from manufacturers and other shippers located throughout the United States who needed to transport LCL cargo between New York and Puerto Rico (A. 474, 481-482, 490, 509-510, 534-535). These shippers arranged to deliver their LCL cargo to the consolidators' facilities, which were located within a 50-mile radius of the Port of New York (A. 474, 490, 513, 518-519, 536, 539).[9] Dolphin and San Juan received their customers' goods at their off-pier facilities, and, using non-ILA labor, consolidated the goods with those of other customers and stuffed them into containers provided by NYSA-member steamship companies (A. 474-477, 482-483, 485, 488, 490-492, 497, 513-515, 519-525, 527-528, 536).[10] The consolidators hired truckers to

[9] Dolphin's terminal was located in New Jersey; San Juan leased space in Manhattan (A. 474, 492, 497-498, 528, 538, 548-549).

[10] Dolphin and San Juan obtained containers from Trans-America Trailer Transport, Inc. (TTT) until August 1974. After that date, they used containers supplied by Maritime Transportation Management, Inc. (MTM) and Puerto Rico Marine Management, Inc. (PRMMI). Puerto Rico Maritime Shipping Authority (PRMSA), an instrumentality of the

transport the filled containers to the dockside facilities of the steamship companies for loading onto ships by longshoremen (A. 476, 484-485, 488, 491, 525-526, 528).

Beginning on August 24, 1974, and continuing through January 23, 1975, the NYSA-ILA Container Committee assessed liquidated damages of approximately $47,000 against NYSA members TTT and MTM (see note 10, *supra*). Those fines were imposed because the steamship companies provided containers to Dolphin and San Juan, who did not utilize ILA labor. As a result, TTT and MTM informed the consolidators that they would no longer supply them with containers or provide space aboard their vessels. Thereafter, TTT and MTM ceased doing business with Dolphin and San Juan (A. 479-481, 485, 487-488, 498-499, 512, 529-533, 550, 552-568).[11]

b. *The Ports of Baltimore and Hampton Roads (the "Associated Transport" case)*

i. *Containerization and FSL Cargo*

Fully containerized ships first appeared in the Ports of Baltimore and Hampton Roads in 1965 (A.

Commonwealth of Puerto Rico that owned container vessels operating in the Puerto Rico-New York trade, engaged MTM and PRMMI to manage and operate those vessels (A. 470, 476-478, 487, 491, 496-497, 498, 527, 539, 544-545, 546-548).

[11] Dolphin and San Juan could not conduct their businesses unless they had access to empty containers owned by the steamship lines (A. 488, 499). Even if the consolidators were able to obtain containers from other sources that would fit the TTT and MTM ships, the Rules appear to preclude use of such containers (A. 533). See App., *infra*, 3a.

9, 12, 24-25, 51, 74, 78, 91, 159-160, 176, 212). During the ensuing decade, ships carried a greatly increased amount of import cargo in containers (A. 92, 103, 136, 154, 160).

Houff Transport, Inc. (Houff) and Associated Transport, Inc. (Associated)[12] are ICC-licensed common carriers engaged, *inter alia*, in the business of transporting FSL containers to and from the pier for their customers (A. 23-25, 30, 34, 56, 182, 200). Houff, a non-union business, has operated truck terminals in Baltimore, Maryland, since 1946 and in Norfolk, Virginia, since 1952 (A. 23, 33, 188). Associated, which employs Teamster-represented drivers, has operated a truck terminal in Virginia Beach since the 1960's (A. 42, 56-57, 200).

Following the introduction of containers in the shipping industry, shippers or agents of consignees hired truckers such as Houff and Associated to transport containers (A. 24-25, 30, 51, 57, 64, 67, 74, 183, 189, 191, 197).[13] The shipper or agent provided the trucker with a delivery order, which directed the

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[12] Associated is a member of Tidewater Motor Truck Association (TMTA), an association of 28 truckers who operate in the Hampton Roads area (A. 197). TMTA intervened in the court of appeals.

[13] Prior to the advent of containerization, Houff and Associated picked up loose import cargo at the piers in Baltimore and Hampton Roads and hauled it at their customers' direction to the ultimate consignee (A. 159, 200). Although Houff and Associated operated terminals to facilitate the transportation of cargo, they did not operate warehouses (A. 77-78) (see *infra*, page 17 note 16, page 18 note 18).

steamship company to release the container to the trucker (A. 24-25, 31, 49, 51-52, 57-59, 68, 72, 172, 183, 287, 303).[14] The bill of lading—a contract between the shipper and the trucker, to which the steamship company was not a party—made the trucker responsible for the FSL cargo from the time he picked it up at the pier until he delivered it to its destination (A. 48-49, 52, 59, 67-68, 72, 76, 88, 202-203, 298-299). Unless the consignee requested and paid a premium for "exclusive use of the equipment," the trucker could open the container and transfer its contents before making delivery (A. 26-27, 30-31, 45, 49-50, 54, 62-63, 84, 129-130, 144, 194, 204).[15]

After picking up sealed FSL containers from the pier, truckers such as Houff and Associated hauled them to their off-pier terminals where they either left the containers intact for delivery to the consignee or directed their own employees to strip the cargo and

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[14] If a steamship company owned the container, a trucker could not obtain custody of the container unless an Equipment Interchange Agreement was in effect between the trucker and the steamship company. Such an agreement set forth the rights and obligations of the trucker when he received custody of the steamship company's container and prescribed the per diem charge paid by the trucker for the use of the container (A. 29, 36, 46, 50, 58-61, 73, 184, 289-297, 409-419, 522). However, the interchange agreement did not control the trucker's movement of the cargo (A. 31, 50, 62, 66, 73, 188-189, 204). As discussed above, that was governed by the bill of lading (A. 67, 84, 88, 192, 204).

[15] The bill of lading typically provided that the trucker was not "bound to transport [the cargo] by any particular * * * vehicle" (A. 299).

stuff it into one of the trucker's trailers prior to delivery (A. 12-13, 25-26, 43-45, 52, 54, 56, 67-68, 70, 74, 83, 162-163, 169, 187-188, 224).

For a number of years, Associated and Houff routinely stripped FSL containers and stuffed the cargo into their own vehicles when necessary. This practice is referred to as "short-stopping." For example, if Associated picked up two 20-foot containers destined for the same consignee, it would stuff the contents of both containers into one of its 45-foot trailers rather than haul the containers separately with two of its tractors. This would substantially reduce the trucker's direct labor costs and variable expenses including gasoline and oil. In other instances, truckers stripped containers because the container load was improperly balanced, or because the route to the consignee was too hazardous for the hauling of a large container, or the unstripped container was too heavy to meet state highway and bridge weight restrictions (A. 28, 32-33, 35, 44, 53, 63, 69, 73-74, 146, 185-186, 302). It was also economical for truckers to strip containers and return them promptly because they paid a daily rental fee to the steamship company for use of the containers (A. 66, 69, 73-74, 198-199).

ii. *Extension of the Rules on Containers to FSL Cargo*

In 1968 ILA, the Steamship Trade Association of Baltimore (STA), and the Hampton Roads Shipping Association (HRSA), agreed to the Rules on Containers during collective bargaining negotiations (A. 10, 11, 13, 90, 161, 169, 213, 222, 235-242, 270-276).

At that time, the Rules applied only to LCL cargo. No provisions in the Rules required ILA labor to strip FSL cargo at the pier until 1974 (A. 11-15, 22, 36-39, 94, 96-98, 102, 163, 176-177; 238, 243-249, 273, 280).[16]

Since 1974, the Rules have provided that ILA labor must strip all FSL containers that otherwise would be stripped "by other than [the consignee's] own employees" within 50 miles of the ports (App., *infra*, 4a) (A. 40, 127, 132-133, 180-181, 256, 280).[17] The amended Rules also provide that, while FSL cargo consigned to the beneficial owner's place of business or warehoused for 30 days within the port area need not be stripped by ILA labor, a royalty must be paid to the Container Royalty Fund for each such container not stripped by longshoremen (App., *infra*, 5a-6a, 12a-13a) (A. 17, 38, 95, 214, 255, 257-258, 263, 281, 286).

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[16] Prior to 1974, ILA labor stripped FSL containers at the pier only at the request of consignees (A. 9, 12, 15, 21, 90, 95, 224). Truckers routinely hauled FSL containers holding cargo that was consigned to warehouses located within 50 miles of the port, where warehouse employees stripped them, except for the period 1969-1973 when longshoremen stripped those containers at the pier. In January 1973, as a result of the Dublin Supplement to the Rules, truckers were permitted to resume hauling FSL containers to port area warehouses without stripping by longshoremen provided the cargo was stored there at least 30 days (A. 14, 17, 40-41, 78-81, 84-87, 137, 144-145, 164-165, 170, 172-173, 266). See App., *infra*, 6a-7a.

[17] Since 1971, the Rules in effect in New York, Baltimore, and Hampton Roads, which were negotiated by CONASA on behalf of NYSA, STA, and HRSA, have been identical (A. 10, 19, 123-124, 140). See App., *infra*, 1a-13a.

The effect of these Rules, as clarified in 1975,[18] is that whenever a trucker strips an FSL container with his own employees at an off-pier terminal located within 50 miles of the port, the steamship company that owns that container becomes liable for liquidated damages of $1000 per container (A. 16-17, 166-167, 260, 284).

iii. *Application of the Rules on Containers to Truckers*

After the new Rules became effective, Houff's employees, stationed at its Baltimore area truck terminal within 50 miles of the port, stripped containers picked up from United States Lines (USL) and Lavino Shipping Company (Lavino). They then stuffed the contents into Houff trucks for transport to its customers in West Virginia. Houff had found the containers to be overloaded and unsafe and determined that their rental was a needless expense (A. 27-29, 33, 183-184). Pursuant to the Rules on Containers, USL and Lavino were subsequently assessed liquidated damages of $2000 and $1000. When Houff refused to reimburse these expenses, USL and Lavino cancelled their interchange agreements with Houff

[18] In 1975, after a suspension of the Rules by ILA resulted in a resumption of the practice by longshoremen of stripping all import containers consigned to warehouses in the port area, the Rules were clarified to provide that "trucking stations where containers are unloaded within the geographic area do not constitute bona fide public warehouses even where cargo is destined for delivery outside the geographic area." (A. 15, 81-83, 85-86, 138-139, 145, 164-165, 171-173.) See App., *infra*, 7a.

(A. 29, 186, 305-329, 334-346). After the cancellation of those agreements, USL and Lavino refused to release containers to Houff. Houff lost substantial amounts of business because its customers reassigned their hauling work to truckers having USL and Lavino interchange agreements (A. 29, 30, 33-34, 186-187, 330-333).

In September 1974, Associated picked up eight FSL containers from USL at a Norfolk pier and stripped them at Associated's Virginia Beach terminal (A. 60-61). Associated had determined that one container was overloaded and that the rental of the others was a needless expense because Associated had available its own empty trailers (A. 61-62, 192-193). Pursuant to the Rules on Containers, USL was subsequently assessed $8000 in damages. When Associated refused to reimburse USL for that expense, USL cancelled its interchange agreement with Associated (A. 63, 195-198, 396-406). Associated, like Houff, lost a substantial amount of business as a result (A. 63-64, 197).

2. **The Board's Conclusions and Orders**

Based on these facts, the Board concluded that truckers and consolidators, not longshoremen, traditionally performed off-pier stripping and stuffing of containers. Accordingly, the Rules on Containers, which required performance at the pier by longshoremen of work traditionally performed by consolidators and truckers away from the pier, had a secondary objective forbidden by Section 8(e) of the Act. For

the same reason, ILA's efforts to enforce the Rules by imposing economic sanctions violated Section 8(b)(4)(B) of the Act.

In the *Dolphin* proceeding, the Board followed its decision in the *Conex* case,[19] which also involved the application of the Rules on Containers to LCL cargo in the Port of New York. In *Conex*, the Board concluded that (221 N.L.R.B. at 959-960) (footnote omitted):

> The traditional work of the longshoremen represented by ILA has been to load and unload ships. When necessary to perform their loading and unloading work, longshoremen have been required to stuff and strip containers on the piers.
>
> Similarly, for many years, maritime cargo has been sorted and consolidated off the docks by companies employing teamsters and unrepresented employees. With the advent of vessels designed exclusively to carry the large containers presently in use, these consolidating companies, such as Consolidated and Twin, have continued to consolidate shipments into containers prior to their placement aboard the vessels. The consolidators generate such work themselves, performing it not on behalf of the employer-members of NYSA but for their own customers who have goods to ship. Furthermore, they perform this consolidating work at their own off-pier premises, with their own employees who are outside the unit represented by ILA, and who fall within the

[19] *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc.)*, 221 N.L.R.B. 956 (1975), enforced, 537 F.2d 706 (2d Cir. 1976), cert. denied, 429 U.S. 1041 (1977).

> coverage of separate collective-bargaining agreements, under which they are represented by other labor organizations. It is clear, therefore, that Consolidated and Twin have traditionally been engaged in the work of stuffing and stripping containers such as are here in controversy.
>
> From the foregoing and the record as a whole, it is clear that the on-pier stripping and stuffing work performed by longshoremen as an incident of loading and unloading ships does not embrace the work traditionally performed by Consolidated and Twin at their own off-pier premises. It does not fall within ILA's traditional role to engage in make-work measures by insisting upon stripping and stuffing cargo merely because that cargo was originally containerized by nonunit personnel. Yet, ILA's demands here could only be met if the work traditionally performed off the pier by employees outside the longshoremen unit were taken over and performed at the pier by longshoremen represented by ILA.

Similarly, in *Associated Transport*, the Board adopted (Pet. App. 114a-115a) the following conclusions from the Administrative Law Judge's decision (Pet. App. 164a-166a):

> [T]he history of the longshoremen's work tradition in Baltimore and Hampton Roads shows that their role in handling break-bulk import cargo ended at the head of the pier, where the ILA freight handler picked up the cargo and loaded it onto a truck. Thereafter, the fate of that cargo was the responsibility of the motor carrier, as set forth in the bill of lading.

> The advent of containerization * * * did not change the traditional role of the ILA longshoremen. The motor carriers have treated import shippers' loads destined for consignees located more than 50 miles from the center of the port much as they did break-bulk cargo. For, with very rare exceptions, motor carriers have freely picked up the steamship company's containers mounted on wheeled trailers and hauled them to the consignee in accordance with the bills of lading [and have stripped those containers when necessary]. * * * [I]n the performance of contracts to haul cargo from a pier to the consignee, motor carriers have traditionally utilized their own employees whenever economy, safety, or government regulations required the stripping of the shipper's load destined to a consignee outside the 50-mile zone.
>
> From the foregoing and the record as a whole, I find that the traditional on-pier work of longshoremen has not included the work performed by the employees of motor carriers, [such] as Associated and Houff, at their off-pier facilities. [Under the Rules, however, truckers] would be obliged to assign this work to ILA labor at the pier. Indeed, in order to avoid the sanctions revealed in this case, motor carriers who might otherwise exercise their discretion to transfer cargo after leaving a CONASA-ILA pier would permit ILA labor to routinely strip all shippers' [loads] destined outside the 50-mile zone, and thus transform containers into cargo nets.

The Board therefore held that longshoremen in the Ports of Baltimore and Hampton Roads, as in *Conex*, "had *not* historically done the work" that the Rules

on Containers sought to obtain exclusively for them (Pet. App. 116a-117a).

Because the Rules on Containers sought to acquire work for ILA members that historically had not been performed by longshoremen, but instead had been performed by employees of consolidators and truckers, the Board held that the "work preservation" doctrine of *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612 (1967), did not immunize the Rules. In the absence of a valid work preservation objective, the Board concluded that the purpose of the Rules negotiated by ILA was to force steamship companies to cease doing business with consolidators and truckers who did not surrender their traditional work, in violation of Section 8(e) of the Act, 29 U.S.C. 158(e) (Pet. App. 97a, 166a). Similarly, by fining and imposing liquidated damages on the steamship companies under the Rules on Containers, ILA coerced the steamship companies to cease doing business with the consolidators and truckers, in violation of Section 8(b)(4)(B) of the Act, 29 U.S.C. 158(b)(4)(B) (Pet. App. 98a, 166a-167a). Accordingly, the Board ordered ILA and the employer organizations to cease giving effect to the Rules on Containers to the extent that they had been found to be unlawful (Pet. App. 98a-109a, 117a-118a, 168a-184a).

3. The Court of Appeals' Decision

A divided panel of the court of appeals refused to enforce the Board's orders, holding that the Rules on

Containers and the efforts of ILA to enforce them with economic sanctions constituted forms of "work preservation" privileged under *National Woodwork* (Pet. App. 44a-52a). The court was of the view that "the Board erred as a matter of law by ignoring traditional work patterns when defining the work in controversy" (Pet. App. 51a; footnote omitted). It stated that "[l]ongshoremen have historically loaded and unloaded ocean-borne cargo, which not only has meant loading the cargo into and out of the hold of the ship, but also has meant sorting the cargo and loading it on to equipment such as pallets." For this reason, the court concluded, "containerization merely represents a change in equipment." The court added that stuffing a container is substantially the same as loading a ship, and stripping a container is not "distinctly different from and unrelated to" sorting cargo discharged from a ship (Pet. App. 48a-50a).[20]

Judge Robb dissented, stating (Pet. App. 82a-83a):

> I am not impressed by the fiction that a container is part of the hold of a ship; if it is, then so is any large box in the hold of a ship. Nor am I persuaded by the "similarities" which the majority perceive between the work of loading and unloading ships and the work of filling and emptying containers. The question is not whether there may be similarities in the work entailed in the two operations. Rather, the question is, who traditionally has done that work.
>
> In my opinion the longshoremen are attempting to acquire work they have never had, therefore the defense of work preservation must be rejected. * * *

[20] The court also concluded that the employers subject to union pressure—the steamship companies—"controlled" the work in controversy within the meaning of *NLRB* v. *Enterprise Association of Pipefitters*, 429 U.S. 507 (1977). The court reasoned that the steamship companies "controlled the disposition of all the containers at issue" and "simply refused to supply their containers to the truckers and consolidators so that the Rules would be complied with * * *" (Pet. App. 56a-57a).

The full court, with four judges dissenting, denied the Board's petition for rehearing en banc (Pet. App. 87a-88a).

SUMMARY OF ARGUMENT

I.

The Rules on Containers, which obligate employer-steamship companies to cease doing business with consolidators and truckers who stuff and strip containers within 50 miles of the docks, fall within the literal prohibition of Section 8(e) of the National Labor Relations Act, 29 U.S.C. 158(e), which forbids "unions and employers to enter into collective bargaining contracts whereby the employer ceases or agrees to cease doing business with any other person." *NLRB* v. *Enterprise Association of Pipefitters*, 429 U.S. 507, 517 (1977). However, the decisions of this Court establish that only "secondary agreements" violate Section 8(e), not primary agreements having the purpose of preserving work traditionally performed by the contracting employees.

The question whether an agreement is a primary "work preservation" agreement, rather than an un-

lawful secondary agreement, depends upon whether, under "all the surrounding circumstances," the agreement was intended to preserve traditional unit work, or instead was "tactically calculated to satisfy union objectives elsewhere." *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612, 644 (1967).

In the present case the Board determined that, in light of all the surrounding circumstances, the union's objective was not to preserve work traditionally performed by its members but rather to enlarge its work opportunities by eliminating the off-pier loading and unloading historically performed by consolidators and truckers.

The Board determined that truckers and consolidators performed the work of handling cargo at inland terminals both before and after the advent of containerization. Longshoremen, by contrast, handled cargo only at the pier. Moreover, longshoremen and off-pier workers served different economic markets: longshoremen acted on behalf of steamship companies that employed them to load ships, while consolidators and truckers acted on behalf of shippers who employed them to serve their freight forwarding needs.

There is no doubt that containerization changed the way in which cargo moves from the pier to the ship, which is the traditional work of longshoremen. Containerization decreased the need for piecemeal cargo handling at the pier. However, longshoremen may not secure the off-pier work traditionally performed by other employees simply because improvements in

technology have changed the form in which cargo is conveyed. Because longshoremen have never loaded or unloaded cargo in the separate market served by consolidators and truckers, the Rules on Containers have the forbidden secondary objective of a "boycott to reach out to monopolize jobs or acquire new job tasks." *NLRB* v. *Enterprise Association of Pipefitters, supra*, 429 U.S. at 529 n.16.

Since the Rules on Containers do not serve a valid "work preservation" objective, but instead seek to enlarge work opportunities for longshoremen, it is immaterial that they promote the economic interests of longshoremen. It is also immaterial that they purport to represent a "reasoned response" to the "difficult problem of technological innovation" (Pet. App. 60a). As noted in *Pipefitters*, the parties cannot immunize secondary conduct by agreement. 429 U.S. at 520. Moreover, *Pipefitters* explicitly rejected the notion that workers "may legally demand that their employer cease doing business with another company even if the union's object is to obtain new work so long as that work is for the benefit of [the] employees." 429 U.S. at 529-530 n.16.

II.

This Court held in *Pipefitters* that, in determining whether activity is tactically calculated to satisfy union objectives elsewhere, an important factor is whether the employer against whom the union brings pressure controls the work in controversy. In the present case, the employer-steamship companies did

not have control over the work in controversy. That work—stuffing and stripping containers at offshore terminals at the request of shippers—could be assigned only by the shippers themselves. Because the steamship companies lacked power to grant the union's ultimate demand, they could produce an advantage for the union only by acting as its ally in bringing pressure to bear on third parties (the consolidators and truckers). Here, as in *Pipefitters*, the union's effort to secure work that the employers with whom it had an agreement could not deliver signifies that the union's grievance was not with the employers but rather with other business firms and other workers performing off-pier consolidation and deconsolidation.

The fact that the steamship companies owned the containers withheld from consolidators and truckers does not mean that they controlled the work in controversy. Even if the steamship companies were entitled to withhold the containers (a proposition challenged in pending antitrust litigation), they could not give longshoremen the work that shippers previously awarded to truckers and consolidators.

III.

This Court also noted in *Pipefitters* that, in applying the totality of the circumstances test to determine whether an agreement is aimed at businesses outside of the bargaining unit, it is necessary to consider the "economic context in which the dispute arose," and whether the agreement "could effectively foreclose [the boycotted business] and similar pro-

ducers from the market." 429 U.S. at 524 n.12. Evaluation of the impact of the agreement on persons outside the bargaining unit assists in determining whether it serves "union objectives elsewhere." *National Woodwork Manufacturers Association* v. *NLRB*, *supra*, 386 U.S. at 644.

The Rules on Containers have a direct and severe impact on consolidators and truckers who are denied access to containers essential to their business or who are required to pay large fines to continue to obtain containers. The Rules also deny shippers the benefit of the services performed by consolidators and truckers. This is illustrated by the so-called "make work" provision of the Rules, which requires that a load of cargo that already has been stuffed off the pier must be stripped and restuffed by longshoremen prior to loading. This unnecessary rehandling negates the very purpose of off-pier consolidation, which is designed to load the goods of shippers under controlled conditions, to containerize those goods for safe transport over land and sea, and to avoid the losses and delays resulting from piecemeal handling at the docks.

Rules with such a drastic impact on the separate market served by consolidators and truckers should not be sheltered under an expansive interpretation of the "work preservation" doctrine. The union used the Rules not as a shield, but as a sword to impair the business opportunities of third parties, the laborers whom they employ, and the members of the public who require their services to meet bona fide transportation needs.

IV.

The use of threats or coercion to enforce a secondary agreement violates Section 8(b)(4)(B) of the Act, 29 U.S.C. 158(b)(4)(B), which forbids union pressures that cause an employer to cease doing business with other persons. As the Board found in this case, the object of the liquidated damage penalties assessed against the steamship companies for transporting containers stuffed and stripped by consolidators and truckers was to force the steamship companies to cease doing business with them. Because, as we have noted, these sanctions were utilized to enlarge rather than preserve traditional work opportunities and were directed toward employers who did not have the right to award the work in controversy, they constituted coercive measures prohibited by Section 8(b)(4)(B).

ARGUMENT

I. THE RULES ON CONTAINERS VIOLATE SECTION 8(e) OF THE ACT BECAUSE THEY ENLARGE, RATHER THAN PRESERVE, WORK OPPORTUNITIES FOR LONGSHOREMEN

Section 8(e) makes it an unfair labor practice "for unions and employers to enter into collective-bargaining contracts whereby the employer ceases or agrees to cease doing business with any other person." *NLRB* v. *Enterprise Association of Pipefitters*, 429 U.S. 507, 517 (1977).[21] However, Section 8(e) pro-

[21] Respondents have not sought to defend the Rules on Containers on the ground that they do not constitute an agreement to cease doing business. As previously noted, the Rules, as supplemented and clarified, require that longshoremen must perform all stripping and stuffing of LCL and FSL containers within a 50-mile radius of the docks. See Rules 1(a), 2(B)(4), App., *infra*, 3a, 4a, 6a. The Rules expressly provide that the contracting parties must cease supplying containers to outsiders who stuff and strip containers: "No carrier or direct employer shall supply its containers to any consolidator or deconsolidator." Rule 1(e), App., *infra*, 4a. They further provide, under the heading "No Avoidance or Evasion," that "[a]ny facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility." Rule 7(d); App., *infra*, 8a. The Rules also apply to consolidating and trucking companies that seek to "evade" the boycott provisions by moving their businesses outside of the 50-mile limit. See Rule 7(a); App., *infra*, 7a. Moreover, even if the agreement did not expressly require cessation of business (as the Rules on Containers clearly do), it would nonetheless violate Section 8(e) if it so severely burdened a business relationship that it had as its natural consequence either a change in the method of doing business or the cessation of business dealings altogether. See, *e.g.*, *Danielson* v. *International Organization of Masters, Mates & Pilots*, 521 F.2d 747, 753-754 n.7 (2d Cir. 1975); *Humphrey* v. *International Longshoremen's Association*, 548 F.2d 494, 497 n.14 (4th Cir. 1977) (construing earlier version of Rules on Containers).

hibits only "agreements having 'secondary' objectives"; it "does not prohibit agreements for 'primary' purposes, including the purpose of preserving for the contracting employees themselves work traditionally done by them." *Ibid.* See also *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612, 620, 635 (1967).

Whether an agreement obligating an employer to cease doing business with another person is primary or secondary depends upon "whether, under all the

surrounding circumstances, the Union's objective was preservation of work for [the unit] employees, or whether the agreement[] * * * [was] tactically calculated to satisfy union objectives elsewhere." *National Woodwork Manufacturers Association* v. *NLRB, supra,* 386 U.S. at 644 (footnote omitted). If an agreement has the former objective, it is primary and lawful; if it has the latter objective, it is secondary and unlawful. An agreement that seeks to preserve for employees in the bargaining unit work that they have traditionally performed is primary, if the employer has control over the work and thus can continue to award it. Such an agreement serves the lawful purpose of protecting the jobs of unit employees. 386 U.S. at 646. See also *NLRB* v. *Enterprise Association of Pipefitters, supra,* 429 U.S. at 529-531. On the other hand, an agreement that seeks to acquire new work is secondary because it goes beyond the lawful purpose of protecting the work of the bargaining unit and directly impairs the interests of other employers.[22]

The determination of which side of the line an agreement falls on is to be made by the Board in

[22] As the court observed in *Pipefitters*: if the union had sought to acquire new work, "the union's object would necessarily be to force [the employer] to cease doing business with [the boycotted party], not to preserve, but to aggrandize, its own position and that of its members. Such activity is squarely within the statute" (429 U.S. at 530 n.16). See *National Woodwork Manufacturers Association* v. *NLRB, supra,* 386 U.S. at 630-631; see also *id.* at 648 (Harlan, J., concurring).

the first instance. As noted in *Pipefitters,* the Board must consider all the surrounding circumstances, including "the history * * * of the relevant * * * work traditionally done" by the employees, "the actual conditions in the * * * market," and whether the union seeks "to obtain work that the employer has no power to assign." 429 U.S. at 521, 523, 524 n.12.[23] Judicial review of the Board's determination is limited. As this Court emphasized in *Pipefitters,* the "Board may assign to the presence or absence [of one or more of these factors] much more weight than would the Court of Appeals, but this far from demonstrates a departure from the totality-of-the-circumstances test recognized in *National Woodwork.*" 429 U.S. at 524 (footnote omitted). The court of appeals is not empowered to "reweigh[] the facts" or to overturn the Board's decision because the court "would [not] have arrived at the same result as the Board did * * *." *Id.* at 531-532.

After considering the totality of the circumstances in the present cases, the Board reasonably concluded that consolidating companies and truckers, rather than longshoremen, traditionally performed off-pier stuffing and stripping of containers. Accordingly, insofar as the Rules on Containers sought to acquire

[23] In *National Woodwork,* the Court noted the relevance of factors such as "the remoteness of the threat of displacement by the banned product or services, the history of labor relations between the union and the employers who would be boycotted, and the economic personality of the industry." 386 U.S. at 644 n.38.

this work for longshoremen by obligating their employers to cease doing business with consolidating companies and truckers, they violated Section 8(e) of the Act. In these circumstances, as in *Pipefitters*, the court of appeals erred by "substitut[ing] its own views of the facts for those of the Board." 429 U.S. at 532.

A. The Work in Controversy Traditionally Has Been Performed by the Employees of Truckers and Consolidators, Not Longshoremen

1. The Board's decisions in these cases rest on its findings indicating that historically two separate and distinct consolidating and deconsolidating markets have developed in the shipping industry. One market consists of work generated by shippers who transport their cargo directly to the pier for handling by steamship lines. Longshoremen traditionally have performed this work. The other market consists of work generated by shippers who, instead of sending their cargo directly to the pier, employ the services of middlemen, such as consolidators and truckers, to forward and oversee the transportation of cargo.

Thus, as the Board found (see pages 4-5, 7-9, 12-16, *supra*), prior to the advent of containerization, shippers utilized the services of middlemen such as consolidators to handle their transportation needs. Shippers sent small cargo loads to off-pier facilities of consolidators or freight forwarders where the cargoes were combined with those of other shippers and trucked to the pier for handling by longshoremen.

With the advent of containerization, the consolidators began, as part of their business, to consolidate these shipments into containers prior to delivery to the pier.[24] Similarly, prior to containerization, a shipper with a truckload of goods could contract with a trucker to transport his goods on the trucker's bill of lading directly to the pier. After the introduction of containers, a shipper with a full container load of cargo could arrange for a trucker to haul his container to and from the pier, where longshoremen handled it without stripping and restuffing.

Although the court of appeals characterized containerization as a mere "equipment" change that altered the way ships are loaded (Pet. App. 48a-49a), the so-called "container revolution" accomplished much more than this. The handling of loose cargo "involve[s] a series of separate movements, broken by costly parcel-by-parcel transfer of cargo from one mode of transportation to the next."[25] Containerization provides the shipper with important new transportation options. A shipper can obtain "significant savings in transit time, freight charges, packing, insurance and pilferage losses if the LCL shipment is delivered to [a consolidator] at an inland depot for

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[24] During the same period, longshoremen also performed consolidation work, but only on behalf of customers of steamship companies who sent their shipments directly to the pier.

[25] Note, *Containerization and Intermodal Service in Ocean Shipping*, 21 Stan. L. Rev. 1077 (1969).

consolidation with other LCL traffic."[26] An FSL shipper using containers may avoid all rehandling of cargo. "With the advent of containerization, cargo moves in successive hauls by land, ocean or air, and land carrier without rehandling. Freight may be loaded into containers at inland origins and remain untouched throughout the journey until the containers arrive at inland destinations." Schmeltzer & Peavey, *Prospects and Problems of the Container Revolution*, 1 J. Mar. L. & Com. 203, 211 (1970). "Containers compatible for use by different modes of transportation minimize the cost of transferring cargo between transportation modes—an expense that * * * cuts deep into the savings of efficient intermodal combinations of carriers." Comment, *Intermodal Transportation and the Freight Forwarder*, *supra*, 76 Yale L.J. at 1365.

Of course, containerization changes the way in which cargo is moved from the pier to the ship—the traditional work of longshoremen. Prior to containerization, longshoremen handled loose cargo delivered to the pier on a piece-by-piece basis. Containerization markedly decreased the need for cargo handling at the pier by longshoremen (A. 115, 118, 150, 212, 214, 464). However, the Board properly concluded that the ILA's effort to compensate for that loss by seek-

[26] Ullman, *The Role of the American Ocean Freight Forwarder in Intermodal, Containerized Transportation*, 2 J. Mar. L. & Com. 625, 628 (1971). See also Schmeltzer & Peavey, *Prospects and Problems of the Container Revolution*, 1 J. Mar. L. & Com. 203, 206-210 (1970).

ing to acquire the work involved in preparing cargo for delivery to the pier, and in unloading cargo after it left the pier, was not lawful "work preservation," but rather an unlawful attempt to acquire new work for longshoremen that consolidators and truckers previously had performed.

2. Contrary to the conclusion of the court of appeals (Pet. App. 47a), the Board defined the relevant category of work "based on work patterns both prior to and subsequent to the innovation." It did not merely consider the work patterns that resulted from the adoption of the innovation. As shown above, prior to containerization, freight consolidators and truckers performed the service of collecting shippers' cargo and transporting it to the pier for carriage on a particular vessel. After the advent of containerization, off-pier consolidating and deconsolidating of cargo became part of that process. Longshoremen, by contrast, have handled cargo only at the pier, both before and after the introduction of containers.

Section 8(e) would not prohibit longshoremen from negotiating agreements preserving pier-side work, even though methods for performing that work had changed due to technological advances. Thus, an agreement providing that steamship lines could not subcontract the work of consolidating loose cargo sent to the pier would not violate Section 8(e). This would be analogous to *National Woodwork*. There, the employees represented by the union had traditionally finished blank doors for their employer at the job site. Their collective bargaining agreement provided

that they would not be required to handle prefinished doors. When the employer—who was free, under his contract with the project owner, to decide unilaterally whether or not to use prefinished doors—ordered such doors, the employees refused to install them. The Court concluded in *National Woodwork* that this refusal was primary activity not prohibited by Section 8(e), even though use of the technological innovation of prefabricated doors would have been more economical for the employer. The agreement in question sought no more than preservation of work traditionally performed at the job site.

In contrast, the Rules on Containers violate Section 8(e) because they seek to acquire for longshoremen the stripping and stuffing of containers of shippers who have chosen not to send their loose cargo directly to the pier, but rather to use the services of off-pier consolidators or truckers. Because longshoremen did not handle cargo in this market prior to containerization, the Rules on Containers have the forbidden secondary objective of a "boycott to reach out to monopolize jobs or acquire new job tasks." *NLRB* v. *Enterprise Association of Pipefitters, supra,* 429 U.S. at 529 n.16; *Humphrey* v. *International Longshoremen's Association,* 548 F.2d 494, 498-499 (4th Cir. 1977); *International Longshoremen's Association* v. *NLRB,* 537 F.2d 706, 711-712 (2d Cir. 1976); *International Longshoremen's Association* v. *NLRB,* 560 F.2d 439, 447 (1st Cir. 1977); see also *Associated General Contractors of California* v. *NLRB,* 514 F.2d 433, 438 (9th Cir. 1975).

In short, it is the court below, not the Board, which failed to look at "all the surrounding circumstances" as required by *National Woodwork* and *Pipefitters.* The court apparently reasoned as follows (Pet. App. 46a-52a): before containerization, longshoremen loaded cargo into ships piece-by-piece; after containerization, cargo is loaded into containers that are similar to the holds of ships; therefore, longshoremen are entitled to load containers. But as we have shown, containerization did not merely change the method of loading ships (A. 129). Containers changed the whole system of freight forwarding from the originating consignor to the ultimate consignee. Moreover, for present purposes, a container is not properly viewed as the equivalent of the hold of a ship. It is a special receptacle designed for safe transportation over both land and sea, which avoids repeated handling of cargo and the attendant dangers of theft, loss, and misrouting. Its benefits are maximized by controlled loading and unloading at inland facilities. In these circumstances, the Board could reasonably find that the work in controversy is not the loading of ships. Rather, it is the distinct part of intermodal transportation affected by containerization—the inland handling of cargo—in which longshoremen have never engaged.

3. Contrary to the suggestion of the court of appeals (Pet. App. 50a), the Board's analysis does not conflict with *Northeast Marine Terminal Co.* v. *Caputo,* 432 U.S. 249 (1977). *Caputo* held that container stuffing and stripping, performed at or near the

pier, constitutes maritime employment under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, and that injuries sustained in the course of such work are compensable under the Act. The Court so concluded because it found that modern cargo handling techniques had moved much of the longshoremen's work from the ship to the shoreline, and that, in recognition of this fact, Congress had intended the Act to apply to tasks performed on the waterfront, including "the handling of cargo as it moves between sea and land transportation after its immediate unloading" (432 U.S. at 267). See also *P.C. Pfeiffer, Inc.* v. *Diverson Ford*, No. 78-425 (Nov. 27, 1979), slip op. 12-13.

However, as noted above, the fact that longshoremen perform some stuffing and stripping work does not mean that they traditionally performed all such work. In particular, a past practice of stripping and stuffing containers at the pier at the direction of steamship owners is not equivalent to stripping and stuffing containers at inland facilities at the direction of shippers. As the Court noted in *Caputo*, stuffing and stripping "may be done at the waterfront or inland" (432 U.S. at 253 n.2).[27] Respondents are not entitled to prevail in this case unless they can establish a claim to both pier-side and inland stripping and stuffing, whereas the injured parties in the compensation cases were entitled to prevail by showing that pier-side stripping and stuffing was sufficiently linked to maritime commerce.[28]

[27] The stuffing and stripping in *Caputo* was done at the pier, at the request of the longshoremen's own employers (432 U.S. at 253). This is traditional longshoremen's work.

B. The Rules On Containers Have A Secondary Objective Even Though They Seek To Secure Economic Benefits For Longshoremen

Contrary to the view of the court of appeals (Pet. App. 53a-54a), the Rules on Containers do not have a lawful "primary" objective simply because they are "directly traceable to the collective bargaining relationship between the [employers] and the ILA and to the efforts of the parties * * * to adjust to an extremely thorny industrial issue: technological innovation versus job security." Moreover, it is no defense to the charge of violating Section 8(e) that the ILA lacked an intention to organize the "labor relations of the trucking companies and the consolidators" (*ibid.*). As held in *Pipefitters*, the mere fact that an agreement has been negotiated between a union and an employer and bestows benefits on the employees covered by the agreement does not render the agreement primary and lawful. As the Court explained:

[28] The test under the Longshoremen's Act—relationship to maritime commerce based on status and situs—has no similarity to the test here, which is whether the employee unit has a traditional claim to perform the work in controversy. We note that it would make no difference under the Longshoremen's Act whether the ILA-represented unit or some other unit had traditionally performed the stuffing and stripping work in question. As the Court noted in *P.C. Pfeiffer, Inc.* v. *Diverson Ford*, No. 78-425 (Nov. 27, 1979), "the scope of maritime employment [does not] depend on the vagaries of union jurisdiction." Slip op. 13.

"The distinction between primary and secondary activity does not always turn on which group of employees the union seeks to benefit * * * a union's efforts to influence the conduct of the nonstruck employer are not rendered primary simply because it seeks to benefit the employees of the struck employer." 429 U.S. at 529 n.16. *Pipefitters* explicitly rejected the notion that "workers may legally demand that their employer cease doing business with another company even if the union's object is to obtain new work so long as that work is for the benefit of [the] employees." *Id.* at 529-530 n.16.

Likewise, an agreement requiring an employer to cease doing business with another firm in order to enlarge job opportunities of the union has a forbidden secondary objective even though the union does not seek to organize the work force of the boycotted firm. As the Court explained in *Pipefitters* (quoting from *National Woodwork*) (429 U.S. at 529 n.16):

> [t]here need not be an actual dispute with the boycotted employer, here [the consolidators and truckers], for the activity to fall within [the secondary] category, so long as the tactical object of the agreement and its maintenance is that employer * * *.

In sum, because the Rules on Containers sought to force the steamship companies to cease doing business with consolidators and truckers, "not to preserve but to aggrandize" the position of ILA and its members (429 U.S. at 530 n.16), it follows that the consolidators and truckers were the "tactical object of

the agreement" even though the agreement yielded economic benefits to ILA's members. See 429 U.S. at 530-531 nn.17-18; *NLRB* v. *Denver Building Council*, 341 U.S. 675, 689 (1951); *International Brotherhood of Electrical Workers* v. *NLRB*, 341 U.S. 694, 700 (1951). The agreement did not seek to preserve traditional job tasks within the unit; rather, its object was to eliminate the performance of traditional job tasks elsewhere.

This conclusion is reinforced, as we demonstrate below, by the fact that the steamship lines—the longshoremen's employers—lacked control over the work in controversy and could not award it to the longshoremen. Thus, it is evident that the object of the agreement was not to secure the work from the employers, who could not give it, but rather to foreclose the business opportunities of the truckers and consolidators.[29]

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[29] If, as we submit, the Board correctly found that the Rules on Containers violate the secondary boycott provisions of the Act, then the court of appeals' observation that the Rules "represent a reasoned response to the difficult problem of technological innovation" (Pet. App. 60a) is irrelevant. The parties by agreement cannot immunize conduct that is proscribed by statute. "The substantial question * * * is whether, with or without the collective-bargaining contract, the union's conduct at the time that it occurred was proscribed secondary activity * * *. If it was, the collective-bargaining provision does not save it." *NLRB* v. *Enterprise Association of Pipefitters, supra*, 429 U.S. at 520.

C. Because The Steamship Lines Do Not Control The Work In Controversy, The Union's Agreement With Them To Obtain That Work Necessarily Has The Objective Of Affecting The Business Activities Of Other Persons

In *Pipefitters*, this Court upheld the Board's position that, in determining whether union activity is "tactically calculated to satisfy union objectives elsewhere" (429 U.S. at 522)—and therefore secondary —a critical factor is whether the employer against whom the union brings pressure controls the work at issue. *Id.* at 524-528. The facts in *Pipefitters* are strikingly similar to those presented here. There, the union had a contract with Hudik that required Hudik's employees, who were represented by the union, to perform cutting and threading of pipe on the jobsite. Austin, the project engineer, specified that climate control units manufactured by Slant/Fin, which had factory-installed internal piping, must be used on the construction project. When Hudik's employees refused to handle the prepiped units specified by Austin, the Board found, and this Court agreed, that such conduct had an unlawful secondary object of forcing a change in Austin's choice of product. As the Court explained (429 U.S. at 530 n.16):

> Here, * * * the union * * * sought to acquire work that it never had and that its employer had no power to give it, namely, the piping work on units specified by any contractor or developer who prefers and uses prepiped units. By seeking the work at the Norwegian Home, the union's tactical objects necessarily included influencing Austin; this conduct falls squarely within the statement of *National Woodwork* that a union's activity is secondary if its tactical object is to influence the boycotted employer.

Similarly, in the present case, the union negotiated an agreement with the employer steamship lines which provides that all consolidation of LCL cargo and all stripping of FSL cargo within 50 miles of the docks must be performed by longshoremen. This agreement promises more than the steamship companies can give. The shippers of LCL cargo contracted with Dolphin and San Juan to have their consolidation work performed off-pier. Similarly, the shippers of FSL cargo contracted with Associated and Houff to transport their cargo and left it to the truckers to determine how to handle that cargo after pick-up. The steamship lines had no right to award to longshoremen the stuffing and stripping work performed by these consolidators and truckers. Accordingly, insofar as the Rules on Containers sought to acquire this work for longshoremen, they necessarily had as a "tactical object" the pressuring of consolidators and truckers to change their method of doing business or to cease doing business altogether.[30]

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[30] In simple terms, the union's grievance was not with the employer steamship companies, who could not satisfy their demands, but rather with third parties outside of the bargaining unit. As the Board noted in its brief in this Court in the *Pipefitters* case, No. 75-777 (Br. 27), agreements such as the Rules on Containers have a secondary object because they are "exerted against a firm that lacked power to grant the union's ultimate demand, and that could produce advantage

The court of appeals nonetheless concluded (Pet. App. 56) that the Board's "posture in the cases before us is not supported by rational application of the right to control test," reasoning that the steamship lines in fact "controlled the disposition of all the containers at issue." Once again, however, the court has misapprehended the work in controversy. Control over the disposition of containers is not tantamount to control over the work in controversy.[31] As we have

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for the union only by acting as the union's ally in bringing pressure upon a third party, by inducing a change in the business of that third party or by ceasing to do business with it." See also *NLRB* v. *Denver Building Council, supra,* 341 U.S. at 692; *International Longshoremen's Association* v. *NLRB,* 560 F.2d 439, 446-447 (1st Cir. 1977).

[31] We also note that the steamship companies may not, in fact, have a legal right to withhold containers pursuant to the Rules on Containers. The Rules have been challenged as giving rise to an illegal boycott under the antitrust laws (see *International Longshoremen's Association* v. *Consolidated Express,* petition for cert. pending, No. 78-1902). The Rules have also been challenged under the Shipping Act of 1916, 46 U.S.C. 801 *et seq.*, and the Intercoastal Shipping Act of 1933, 46 U.S.C. 843 *et seq.* (see *Sea-Land Service, Inc., and Gulf Puerto Rico Lines* (No. 73-17), and *Puerto Rico Maritime Shipping Authority—Proposed ILA Rules on Containers* (No. 74-40) (FMC June 14, 1978), review pending, No. 78-1776 (D.C. Cir.)). In that case, the FMC held, *inter alia,* that water carrier tariff provisions requiring restuffing pursuant to the Rules on Containers were unjustly discriminatory. As the Administrative Law Judge explained in that proceeding (Oct. 9, 1975 decision, slip op. 33-34):

> when the ocean transportation service * * * is the same for two exporters who each ship 20 identical packages of the same commodity, to permit the first of these two exporters to have his container moved promptly and freely across the pier [because it has been stuffed outside the 50 mile radius prescribed under the Rules on Containers], and at the same time to require the second exporter to have his container delayed, stripped and restuffed or to require him to deliver his 20 packages loose to the pier [because it has been stuffed within the 50 mile radius] obviously restricts the freedom of choice of the second exporter and results in unfair and unjust discrimination against the second exporter.

shown above (pages 34-39), the disputed work is the stuffing and stripping of containers at inland facilities for shippers who choose not to have their cargo handled in loose form at the pier. Refusal to supply containers is only a sanction chosen by the union and the steamship companies to enforce the Rules on Containers and to effectuate the boycott of the consolidators and truckers. That refusal could not, of course, alter the fact that it is the shippers —and the shippers alone—who have the right to enter into contracts for the transportation of their goods. When a shipper selects an off-pier consolidator or trucker to avoid piecemeal handling of his goods at the pier (with the attendant risk of loss, theft or misrouting), his right to so contract is impaired by the union's insistence on "make-work measures [such as] stripping and stuffing cargo merely because that cargo was originally containerized by non-unit personnel." *Conex, supra,* 221 N.L.R.B. at 960.[32]

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[32] As the Administrative Law Judge explained in *Sea Land Service, Inc., supra,* slip op. 5:

> Needless to say, a shipper, who already has gone to the expense of stuffing a container at a point away from the waterfront facilities, is not happy to be faced with the

It follows from the foregoing that the "work preservation" tactics employed in this case are fundamentally different from those considered in *National Woodwork Manufacturers Association* v. *NLRB*, *supra*. As previously noted, the contractor in *National Woodwork* exercised complete discretion to use finished or unfinished materials at the job site. The persons who contracted for his services did not specify which materials must be used. Accordingly, enforcement of an agreement between the union and the contractor to use unfinished materials, and thereby preserve the work traditionally performed by union members at the job site, had a primary objective. The employer could satisfy the union's demand without infringing the contractual rights of other persons (386 U.S. at 616). In the present case, in contrast, the Rules on Containers call for pier-side stuffing and stripping in contravention of the right of shippers to contract with freight forwarders for

additional PRMSA transfer charge for the stripping of that container and the restuffing of the contents by the ILA at the waterfront facilities, before the cargo is ocean-borne to Puerto Rico.

If the shipper, forwarder, or consolidator chooses not to be subjected to the $1000 penalty by incurring the extra expense (transfer charge) for the second handling of the contents of his container before it is ocean-borne, said shipper also would be concerned with possible delays, losses, or damages related to the second handling. Of course, under ideal circumstances, the shipper wants his cargo stuffed only once and he does not want to be subjected to any penalties for "evading" a second handling of his cargo.

inland cargo handling that meets their special transportation needs.[33]

II. THE RULES ON CONTAINERS PRECLUDE STEAMSHIP LINES FROM DOING BUSINESS WITH CONSOLIDATORS AND TRUCKERS AND EFFECTIVELY DEPRIVE SHIPPERS OF THEIR SERVICES

In *Pipefitters*, this Court explained that one relevant element under the "totality of the circumstances test" is the "economic context in which the dispute arose." The Court also noted the significance of the fact that the agreement there in question "could effectively foreclose [the boycotted manufacturer] and similar producers from the market." 429 U.S. at 524 n.12. In short, the incidence of economic sanctions imposed by a challenged agreement is relevant in ascertaining whether the agreement serves "union ob-

[33] In *National Woodwork*, the Board distinguished the situation of a contractor who controlled the work in controversy (Frouge) and that of other contractors who did not. See 386 U.S. at 616-617 n.3. As the Board explained in its brief in this Court in *National Woodwork*, No. 110 (Br. 18, 20): "Frouge * * * was able to grant the Union's demand for more work without disrupting contractual relations with other persons; consequently there was no basis for concluding that the work stoppage involving his employees was directed at anyone other than Frouge. * * * * * [This] was not within the power of the other three contractors, since their contracts with the project owners effectively removed the assignment of the particular work from the ambit of their control. Permitting the Union to rely upon the work preservation clause in the latter case necessarily would have had direct effects on those outside the employer-union relationship." As previously noted, this Court upheld the Board's control analysis in *Pipefitters*.

jectives elsewhere." *National Woodwork Manufacturers Association* v. *NLRB*, *supra*, 386 U.S. at 644.[34]

There can be little doubt that the Rules on Containers, as enforced in these cases, compel shippers to forego the benefits of services of consolidators and truckers whose terminals are located within 50 miles of the piers. They also impose severe economic disabilities on consolidators and truckers who do not use ILA labor. Rule 1(a) (App., *infra*, 3a) requires that a load of LCL cargo, which has already been stuffed into a container that is "owned, leased or used" by the steamship company, must be stripped from that container at the pier by "deepsea ILA labor" and restuffed into another container prior to loading aboard ship (A. 531-533). This is the so-called "make work" provision. If such a container is not stripped at the pier, a $1000 penalty is imposed against the steamship company that transports the cargo (see Rule 7(c), App., *infra*, 8a). As previously noted (see pages 18-19, 47-48 note 32 *supra*), these penalties are often passed on to freight forwarders. Such penalties can only be avoided by using ILA labor to stuff goods at the pier. This, of course, would require repetitive loading of the cargo inland and at the pier.

Similarly, recipients of import FSL cargo who choose truckers to haul containers are, in effect, required to pick up all of their cargo loose at the pier,

[34] See also 386 U.S. at 644 n.38, noting the relevance of the "economic personality of the industry" in applying the "totality of the circumstances" test.

or to choose a trucker who will agree in advance never to strip the cargo within 50 miles of the docks, whatever the necessity for doing so. The Rules require that stripping be performed only at the pier by ILA labor; they characterize any trucker who attempts to strip cargo as a "deconsolidator." Such a trucker is denied access to containers (see Rules 1(a)(3), 1(e), and 7(d), App., *infra*, 4a-5a, 8a). In practice, since truckers strip some but not all FSL containers, steamship companies must cease doing *all* business with any trucker who they suspect strips cargos to avoid being fined on those occasions when the trucker does in fact strip cargoes at his terminal (A. 19, 106, 124-125, 165).

As shown above, enforcement of the Rules against San Juan and Dolphin resulted in a refusal to rent them containers needed to conduct their business. This, in turn, denied shipping customers access to consolidation services previously afforded by San Juan and Dolphin. Many of these shippers would then have no practical choice but to send their goods in loose form to the pier in the future if they wished to make use of containers—a result that negates the very purpose of containerized transportation.

Similarly, the Rules on Containers compel truckers like Associated and Houff, who might otherwise exercise their business discretion to strip FSL cargoes when needed to achieve safe and economical transport, to permit ILA labor to routinely strip FSL cargo to be hauled for their customers. Only in this way could the truckers avoid imposition of liquidated

damages and cancellation of their interchange agreements that would result if the necessity arose to strip the cargo away from the pier. Again, this defeats the purpose of the shipper in selecting a trucker to handle containerized FSL cargo and in authorizing the trucker to exercise discretion to strip containers when necessary to reduce shipping costs or avoid dangerous transportation conditions.

Rules with such a drastic impact on the separate market served by consolidators and truckers are more than a "shield" to preserve the jobs of ILA-represented longshoremen. Rather, they are a "sword" used to monopolize the work of stuffing and stripping containers. See *National Woodwork Manufacturers Association* v. *NLRB*, *supra*, 386 U.S. at 630, citing *Allen Bradley Co.* v. *Local Union, No. 3, Electrical Workers*, 325 U.S. 797 (1945). The "work preservation" doctrine was not intended to shelter the disruptive secondary impact of the Rules on the contractual rights of shippers and freight forwarders or the wastefulness of their "make work" requirements.[35]

[35] Cf. *Connell Construction Co.* v. *Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616, 623 (1975). As Congress declared in the National Productivity and Quality of Working Life Act of 1975, 15 U.S.C. 2401 *et seq.*, "it is the continuing policy of the Federal Government * * * to stimulate a high rate of productivity growth." 15 U.S.C. 2403(a). The Act provides that the "laws * * * of the United States shall be so interpreted as to give full force and effect to this policy." 15 U.S.C. 2403(c). The Act affirms repeatedly that "there is a national need to identify and encourage appropriate application of technology in all sectors of American economic

We emphasize in this connection that this is not a case in which two employee groups are disputing who will perform the same work. If the contention of the longshoremen is accepted, the "work" or service of off-pier consolidation, as performed by local NVOCCs such as San Juan and Dolphin, will substantially disappear. With it will go the benefits of container technology that permit their customers to load cargoes only once at the inland point of departure, without rehandling at the docks of the domestic and foreign ports.

In an effort to confine the scope of its holding, the court of appeals asserted that it would not permit "longshoremen [to] literally chase containers around the country, demanding the right to stuff and strip them" (Pet. App. 51a n.177). It added that "[o]ur decision does not radiate beyond the Rules on Containers, which are restricted in terms to a 50-mile area around each port" (*ibid.*). But the court's attempted limitation of the reach of its decision conflicts with the rationale for that decision. If, as the court believed, a container is the "functional equivalent" of a wooden pallet or cargo net and has replaced the longshoremen's traditional work of loading loose

activity in order to improve productivity." 15 U.S.C. 2401(11). See also 15 U.S.C. 2401(1)-(4), (13), (15). The Act contemplates employee adjustment to technological innovation by techniques such as retraining and worker assistance, not by secondary boycotts that eliminate new technologies that are essential to productivity and full employment nationwide. See 15 U.S.C. 2401(14); F. Scherer, *Industrial Market Structure and Economic Performance* 346-347 (1970); see also Pet. App. 5a ("Containerization * * * engendered huge increases in dockside productivity.").

cargo into ships, then it logically follows that it would be lawful primary activity for longshoremen to seek to preserve their "traditional work" wherever it was being done. Nothing in the court's reasoning would preclude the parties from altering the scope of the Rules to include a wider geographic area than the present 50-mile radius, or indeed, to cover all containerization work.[36]

We also note that the court's attempted limitation of its decision offers cold comfort to the consolidators and truckers who complained to the Board. Rule 7(a) of the Rules on Containers (App., *infra*, 7a) specifies that consolidators or truckers currently operating within the 50-mile zone cannot move beyond that perimeter to "evade" the boycott imposed by the Rules (A. 18-20, 41, 92-93, 226. See *Conex*, *supra*, 221 N.L.R.B. at 960).

III. COERCIVE MEASURES TO ENFORCE THE RULES ON CONTAINERS VIOLATE SECTION 8(b)(4)(B) OF THE ACT

The use of threats or coercion to enforce an agreement with secondary objectives violative of Section 8(e) is unlawful under Section 8(b)(4)(B) of the Act, 29 U.S.C. 158(b)(4)(B). See *NLRB* v. *Enterprise Association of Pipefitters*, *supra*, 429 U.S. at 520-522 & n.8, 528-532 (1977); *Local Union No. 98, Sheet Metal Workers* v. *NLRB*, 433 F.2d 1189, 1196-

[36] The inland packing of large boxes or crates could also be viewed as the "functional equivalent" of loading a ship if those crates contained goods that previously were transported overseas in smaller receptacles. See Pet. App. 82a (Robb, J., dissenting).

1197 (D.C. Cir. 1970). As the Board expressly found (Pet. App. 98a, 166a-167a), the liquidated damage penalties assessed against TTT and MTM for handling containers stuffed by Dolphin and San Juan (see page 13, *supra*), threatened, restrained and coerced those employers to cease doing business with Dolphin and San Juan. Similarly, the liquidated damages assessed against Lavino and USL for handling containers stripped by Houff and Associated (see pages 18-19, *supra*), coerced those employers into cancelling their equipment interchange agreements with the truckers. See *Associated General Contractors of California* v. *NLRB*, 514 F.2d 433, 438-439 (9th Cir. 1975); *Carrier Air Conditioning Co.* v. *NLRB*, 547 F.2d 1178, 1192 (2d Cir. 1976), cert. denied, 431 U.S. 974 (1977); *Acco Construction Equipment, Inc.* v. *NLRB*, 511 F.2d 848, 852 (9th Cir. 1975).

Thus, if, as we contend, the Rules on Containers constitute a secondary agreement in violation of the Act, it follows that ILA pressure to enforce them violated Section 8(b)(4)(B) of the Act.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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MARCH 1980

APPENDIX

CONASA-ILA RULES ON CONTAINERS

(As clarified and reinstated by Supplemental Agreement of May 30, 1975)

PREAMBLE

This Agreement made and entered into by and between the carrier and direct employer members of the CONASA Port Associations (hereinafter referred to collectively as "CONASA") and the International Longshoremen's Association, AFL-CIO ("ILA"), its Atlantic Coast District ("ACD") and its affiliated local unions in each CONASA port ("locals") covers all container work at a waterfront facility which includes but is not limited to the receiving and delivery of cargo, the loading and discharging of said cargo into and out of containers, the maintenance of containers, and the loading and discharging of containers on and off ships.

CONASA agrees that it will not directly perform work done on a container waterfront facility (as hereinafter defined) or contract out such work which historically and regularly has been & currently is performed by employees covered by CONASA-ILA Agreements, including CONASA-ILA craft agreements, unless such work on such container waterfront facility is performed by employees covered by CONASA-ILA Agreements.

RULES

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts which was performed at deepsea waterfront facilities. These rules do not have any effect on work which historically was not performed at a waterfront facility by deepsea ILA labor. To assure compliance with the collective bargaining provisions, the following rules and regulations shall be applied uniformly in all CONASA Ports to all import or export cargo in containers:

Definitions

(a) Loading a Container

—means the act of placing cargo into a container.

(b) Discharging a Container

—means the act of removing cargo from a container.

(c) Loading Containers on a vessel

—means the act of placing containers aboard a vessel.

(d) Discharging Containers from a vessel

—means the act of removing containers from a vessel.

(e) Waterfront facility

—means a pier or dock where vessels are normally worked including a container compound operated by a carrier or direct employer.

(f) Qualified Shipper

—means the manufacturer or seller having a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the export cargo being transported and who is named in the dock/cargo receipt.

(g) Qualified Consignee

—means the purchaser or one who otherwise has a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the import cargo being transported and who is named in the delivery order.

(h) Consolidated Container Load

—means a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo.

Rule 1—Containers To Be Loaded or Discharged by Deepsea ILA Labor

(a) Cargo in containers referred to below shall be loaded into or discharged out of containers only at a waterfront facility by deepsea ILA labor:

(1) Containers owned, leased or used by carriers (including containers on wheels and trailers), hereinafter "containers", which contain consolidated container loads, which come from or go to any point within a geographic area of any CONASA port described by a 50-mile circle with its radius extending out from the center of each port, (hereinafter "geographic area") or

(2) Containers which come from a single shipper which is not the manufacturer ("manufacturer's label") into which the cargo has been loaded (consolidated) by other than its own employees and such containers come from any point within the "geographic area," or

(3) Containers designated for a single consignee from which the cargo is discharged (deconsolidated) by other than its own employees within the "geographic" area and which is not warehoused in accordance with Rule 2(B).

(b) Such ILA labor shall be paid and employed at deep-sea longshore rates under the terms and conditions of the deep-sea ILA labor agreement in each CONASA port, including the provisions for all fringe benefits and any and all other benefits receivable by deep-sea ILA craft workers in each such Port. No cargo shall be loaded into or discharged out of any container by ILA deep-sea labor more than once.

(c) All export consolidated cargo, described in 1(a) (1) and (2) above, shall be received at the waterfront facility by deep-sea ILA labor and such cargo shall be loaded into a container at the waterfront facility for loading aboard ship.

(d) All import consolidated cargo, described in 1(a) (1) and (3) above, shall be discharged from the container and the cargo placed on the waterfront facility where it will be delivered and picked up by each consignee.

(e) No carrier or direct employer shall supply its containers to any consolidator or de-consolidator. No

carrier or direct employer shall operate a facility in violation of the Rules on Containers which specifically require that all Rule 1 containers be loaded or discharged at a waterfront facility.

Rule 2—Containers Not to be Loaded or Discharged by ILA Labor

Cargo in containers referred to below shall not be loaded or discharged by ILA labor:

A. Export Cargo:

(1) All cargo loaded in containers outside the "geographic area".

(2) Containers loaded with cargo at a qualified shipper's facility with its own employees.

(3) Containers loaded with the cargo of a single manufacturer (manufacturer's label) at its facilities with its own employees.

(4) Consolidated container loads of mail, household effects of a person who is relocating his place of residence, with no other type of cargo in the container, or personal effects of military personnel.

(5) There shall be no general warehouse exception applicable to export cargo.

B. Import Cargo:

(1) All cargo discharged from containers outside the "geographic area".

(2) Containers discharged at a qualified consignee's facility by its own employees.

(3) Consolidated container loads of mail, household effects of a person who is relocating his place of business, with no other type of cargo in the container, or personal effects of military personnel.

(4) Containers of a qualified consignee discharged at a bona fide public warehouse within the "geographic area" which comply with all of the following conditions:

1. The container cargo is warehoused at a bona fide public warehouse.
2. The qualified consignee pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days; and stores the cargo for a minimum period of 30 days; and
3. The cargo being warehoused (a) in the normal course of the busines of the qualified consignee; (b) title to such goods has not been transferred from the qualified consignee to another.

The carrier on request will furnish all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2 and 3 have been met. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1. It is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a consolidator or de-consolidator.

(Clarification: In keeping with prior CONASA-ILA decisions trucking stations where containers are unloaded within the geographic area do not constitute bona fide public warehouses even where cargo is destined for delivery outside the geographic area).

* * * * *

Rule 7—No Avoidance or Evasion

The above rules are intended to be fairly and reasonably applied by the parties. To obtain non-discriminatory and fair implementation of the above, the following principles shall apply:

(a) Geographic Area—Agreement in the Port to the geographic area as provided in Rule 1 is based on present consolidated movement patterns in the port. Should any person, firm or corporation for the purpose of evading the provisions of the Rules on Containers, seek to change such pattern by shifting its operations to, or commencing new operations at, a point outside said agreed upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of the Rules on Containers, then said point shall be deemed to be within the said geographic area for the purpose of these rules.

(b) Containers Owned, Leased or Used—Containers owned, leased or used by companies which are affiliated either directly or through a holding company with a carrier or a direct

employer shall be deemed to be containers owned, leased or used by a carrier or direct employer. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the carrier or direct employer, its parent, or stockholders of either of them.

(c) Liquidated Damages—Failure to load or discharge a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of Rule 1 and Rule 2 shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been loaded or discharged under the Rules, then the carrier or its agent or direct employer shall pay, to the joint Container Royalty Fund, liquidated damages of $1,000 per container which should have been loaded or discharged. If any carrier does not pay liquidated damages within 30 days after exhausting its right to appeal the imposition of liquidated damages to the Committee provided in Rule 9(a) below, the ILA shall have the right to stop working such carrier's containers until such damages are paid.

(d) Any facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility.

Rule 8—Renegotiation and Cancellation—No Arbitration

These Rules shall be in effect for the term of the CONASA-ILA Agreement, provided, however, that either party shall have the right to cancel the Rules on Containers at any time on or after December 1, 1974, on thirty (30) days written notice of a desire to renegotiate the provisions of these Rules. Negotiations shall be held during such thirty (30) day period and if the parties are unable to agree by the end of such period, these Rules shall be deemed cancelled. Thereafter, the ILA shall have the right to refuse to handle containers and CONASA shall have the right to refuse to hire employees under the said Rules. The negotiations referred to above shall, under no condition, be subject to the grievance or arbitration provisions of any CONASA-ILA Agreement.

Rule 9—Enforcement of the Rules on Containers

To assure effective, fair and non-discriminatory enforcement of the above Rules, the following regulations shall apply:

(a) A Committee in each CONASA port represented equally by management and union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these Rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by Rule 8 hereof. A joint committee, known as the CONASA-ILA Container

Committee, represented equally by management and labor and made up of representatives (to be mutually agreed upon) from each CONASA Port, namely, Boston, Rhode Island, New York, Philadelphia, Baltimore and Hampton Roads shall meet at least quarterly each year for the purpose of insuring uniformity in the interpretation of these Rules.

(b) A Committee of carriers, together with CONASA-ILA Container Committee will develop uniform documentation which shall be required to be prepared and maintained by all carriers in order to readily identify all Rule 1 containers which are subject to loading or discharging by deepsea ILA labor. It shall be the obligation of employer-members to clearly mark each container's documentation as to whether or not it is a Rule 1 container, which shall be loaded or discharged. If a container's documentation is not clearly marked, it shall be deemed a Rule 1 container and it shall be loaded or discharged by deepsea ILA labor at the waterfront facility. With respect to all containers received at or delivered from the waterfront facility, a record of the same shall be made by ILA Checkers or Clerks. All carriers will distribute to all other carriers any and all information and devices which are being used by any person to circumvent the Rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate CONASA-ILA Container

Committee and to the policing agency provided in (e) below in its port.

(c) Every import container destined to a point within 50-miles of a CONASA Port shall be delivered only on a delivery order. Every export container coming from a point within 50-miles of a CONASA Port shall be received only on a dock/cargo receipt. Such delivery orders and dock/cargo receipts shall certify the place of delivery and origin of the container, the name or names of the person to whom the cargo is being delivered and from which it is shipped, the identity of the owner of the cargo, weight of the cargo, identity of the cargo and the origin and final destination of the container. Copies of such delivery orders and dock/cargo receipts shall be available to, the local port Container Committee and the policing agency provided for in (e) below.

(d) The Container Committee in each CONASA Port shall promulgate to all carriers and direct employers, and to the Container Committees in each CONASA Port, any and all interpretations of the Rules on Containers as and when they are made. This will include uniform interpretations as and when they are issued. The CONASA-ILA Container Committee shall also promulgate uniform interpretations to local port Container Committees, as and when they are issued.

(e) Policing Agency—Each CONASA Port shall establish a method of policing and enforcing these Rules on a uniform and non-discrimi-

natory basis. No such method shall be implemented until presented to and approved by the joint CONASA-ILA Container Committee.

(f) Council of Container Carriers—There shall be organized promptly a Council of Container Carriers composed of representatives of every major container carrier who, subject to the direction of CONASA, shall meet with the ILA at all regular and special meetings of the CONASA-ILA Container meetings, and who shall participate in the discussion and resolution of problems and interpretations of the Container Rules discussed at the said meetings.

(g) Powers of CONASA-ILA Container Committee—In order to permit the fair and nondiscriminatory application of the Rules and to encourage the movement of cargo in all CONASA-ILA ports, the CONASA-ILA Container Committee is hereby empowered to make such amendments or modifications to these Rules as may be necessary to the equitable application of the principles of these Rules to particular cases.

Rule 10—Container Royalty Payments

The two Container Royalty payments required by the CONASA-ILA collective bargaining agreements shall be payable only once in the Continental United States. They shall be paid in that ILA Port where the container is first handled by ILA longshore labor

at longshore rates. The second container royalty payment (provided by paragraph 6 of the 1971-1974 CONASA-ILA Memorandum of Agreement) shall be continued and shall be used for fringe benefit purposes only, other than supplemental cash benefits, which purposes are to be determined locally on a port by port basis. Containers originating at a foreign port which are transshipped at a United States port for ultimate destination to another foreign port ("foreign sea-to-foreign-sea containers") are exempt from the payment of container royalties. Container royalty payments shall be assessed against all containers moving across the continental United States by rail or truck under the foreign-to-foreign "LAND-BRIDGE" system. The said royalty payments shall become due for all such containers moving through CONASA-ILA ports on and after July 1, 1975.

Rule 11—Execution of Agreement

All carriers utilizing ILA labor in handling containers in any of the CONASA ports shall be bound by the CONASA-ILA Rules on Containers, and shall be required to execute the agreement between CONASA and ILA containing the said Rules on Containers. No contracting stevedore shall perform services for any carrier, private or governmental, unless such carrier has subscribed to this agreement as aforesaid.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court Of Appeals for the District of Columbia Circuit

BRIEF FOR INTERVENOR AND CROSS-PETITIONER HOUFF TRANSFER, INC.

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OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported officially[1] but has been reproduced as Appendix A to the Petition herein (App. A to Pet. at 1a-83a).[2] Pertinent

[1]It has been unofficially reported at 102 L.R.R.M. 2361 (1979).

[2]The appendices were bound with the Petition.

decisions and orders of the National Labor Relations Board are *International Longshoremen's Ass'n. (Associated Transport, Inc.)* (App. E to Pet. at 110a-184a), which is reported officially at 231 N.L.R.B. 351 (1977) and unofficially at 96 L.R.R.M. 1636 (1977), and *International Longshoremen's Ass'n. (Dolphin Forwarding, Inc.)* (App. D to Pet. at 90a-109a), which appears officially at 236 N.L.R.B. No. 42 (1978) and unofficially at 98 L.R.R.M. 1276 (1978).

JURISDICTION

The Judgment of the Court of Appeals for the District of Columbia Circuit was entered on September 25, 1979 (App. B to Pet. at 84a-86a). Petitions for rehearing and suggestions for rehearing *en banc* were denied on December 13, 1979 (*e.g.*, App. C to Pet. at 87a-89a). The Petition herein[1] was filed on January 10, 1980, and was granted by Order of this Court filed January 21, 1980 (A. 635). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) (1976).

STATUTORY PROVISIONS INVOLVED

The relevant statutes are pertinent portions of §§8(b) and 8(e) of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. §§158(b) and 158(e) (1976), which are as follows:

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[1]Houff Transfer, Inc., a charging party in the proceedings before the Board and an intervenor in the proceedings before the Court of Appeals, filed a cross-petition (No. 79-1109) on January 16, 1980.

"(b) It shall be an unfair labor practice for a labor organization or its agents —

. . .

(4) . . . (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is —

. . .

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful . . . any primary strike or primary picketing. . . ."

29 U.S.C. §158(b)(4)(ii)(B) (1976)

"(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void. . . ."

29 U.S.C. §158(e) (1976)

QUESTION PRESENTED

Did the Court below err in refusing to enforce a Decision and Order of the National Labor Relations Board, which had found and concluded that certain vessel-owner employer associations and a labor organization had violated Sections 8(e) and 8(b)(4)(ii)(B) of the Labor-Management Relations Act, in a situation as to which clear and substantial evidence, on the record considered as a whole, established:

(1) That the vessel-owner employer associations and the labor organization had an agreement between themselves that they would cease doing business with motor-carrier employers whose employees continued to engage in the *motor-carrier employees' traditional work* of handling cargo in preparation for its over-the-road transportation; and

(2) That the labor organization enforced said agreement; and

(3) That, moreover, the labor organization had theretofore explicitly waived and abandoned any and all *possible* claim to the specific "work in controversy"?

STATEMENT OF THE CASE

This case originated in May of 1975 when Houff Transfer, Inc. (hereinafter "Houff") and other charging parties filed unfair labor practice charges with the

National Labor Relations Board (hereinafter the "Board").[1]

These charges alleged that the International Longshoremen's Association, AFL-CIO[2] (hereinafter "ILA") and Council of North Atlantic Shipping Associations[3] (hereinafter "CONASA") were engaging in violations of Section 8(e)[4] of the Labor-Management Relations Act (hereinafter the "Act"), by agreeing to cease doing business with motor-carrier employers whose employees continued to engage in traditional motor-carrier employees' work of handling cargo in preparation for its

---

[1]Houff's arguments will be addressed primarily to the particular facts and issues directly related to its charges and arising in the Baltimore-Hampton Roads cases, assigned Nos. 77-1735 and 77-1758 in the Court below, reviewing *International Longshoremen's Ass'n. (Associated Transport, Inc.)*, 231 N.L.R.B. 351 (1977) (App. E to Pet. at 110a-184a). Houff, as a charging party, was represented by counsel at the trial of its unfair labor practice charges and filed briefs with the Administrative Law Judge and with the National Labor Relations Board; Houff also intervened, filed a brief, presented oral argument and petitioned for rehearing, suggesting rehearing *en banc*, in the Court of Appeals; and Houff filed a cross-petition in this Court (No. 79-1109).

[2]And its constituent and affiliated labor organizations.

[3]An unincorporated organization whose members are vessel-owner employers' associations for various East-coast ports.

[4]29 U.S.C. §158(e) (1976). These charges alleged that ILA and CONASA agreed: To cease and refrain—and they did cease and refrain—from handling, transporting or otherwise dealing in freight moving to and from the charging parties; and further to cease doing business—and they did cease doing business—with the charging parties.

over-the-road transportation. Houff and the other charging parties also filed separate charges which alleged that ILA was engaging in violations of Section 8(b)(4)(ii)(B)[1] of the Act, by enforcing the above-described agreement between CONASA and ILA.

The Board's Regional Director determined that there was reasonable cause to believe ILA and CONASA were violating the Act as alleged by the charging parties. The Regional Director accordingly issued consolidated complaints, pursuant to 29 U.S.C. §160(b) (1976).

The Board's Regional Director also sought and obtained preliminary injunctions[2] in United States District Courts in Norfolk and Baltimore, enjoining the alleged unfair labor practices in the Hampton Roads and Baltimore port areas.[3]

Upon the Regional Director's consolidated complaints, the merits of the unfair labor practice charges were tried before Administrative Law Judge Leonard M. Wagman.

At trial, the General Counsel's and charging parties' evidence was that longshoremen traditionally handled

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[1]29 U.S.C. §158(b)(4)(ii)(B) (1976). The labor organizations were charged with threatening, coercing and restraining vessel-owner employers with an object of forcing them: To cease handling, transporting or otherwise dealing in freight moving to and from the charging parties; and to cease doing business with the charging parties.

[2]See 29 U.S.C. §160 (l) (1976).

[3]See *Humphrey v. International Longshoremen's Ass'n., AFL-CIO*, 548 F. 2d 494 (4th Cir. 1977).

ocean-going cargo only at the piers, moving and placing packages, cartons, crates, boxes and other containers, of various sizes and descriptions, on and off ships (A. 109, 150, 209-211).

About twenty years ago, the owners of ocean-going vessels began to develop the use of significantly larger containers, usually between twenty and forty feet in length (A. 24, 117, 211). Cargo was loaded or "stuffed" into these larger "trailer-containers" which could be loaded on and off ships without loading and unloading the individual cargo items (A. 114-115). As the handling of containerized cargo continued to develop, ships were fitted for carrying large numbers of trailer-containers which were loaded on and off ships by cranes (A. 211). These containers were designed so they could be hooked onto a power unit for motor-carrier transportation in the ordinary tractor-trailer configuration (A. 211).

Prior to the vessel-owners' utilization of trailer-containers, and prior to the advent of "containerization", motor-carrier employees picked up cargo at inland places of business and delivered the cargo to the piers (A. 150). Similarly, motor-carrier employees picked up cargo at the piers and transported it to recipients' places of business (A. 150). When circumstances dictated, the motor carrier could pick up ocean-going cargo at the piers with local equipment and cause its motor-carrier employees to reload the cargo with other freight, at the port-city trucking terminal and in preparation for over-the-road transportation (A. 23-24, 27-33, 44-45, 83, 185-

186). In the case of export cargo, the motor carrier could, when circumstances dictated, transport such cargo and other freight to its trucking terminal in the port city, for reloading into local equipment in which the cargo would be taken to the piers.[1]

After the large trailer-containers were introduced in the maritime industry, there was not any occasion for the individual cargo items housed in "shipper's load containers" to be removed from the containers at the piers (A. 118-119). "Shipper's load cargo" — cargo consisting of a single shipper's goods, housed in a large trailer-container for transportation by sea and land to a single recipient—required no handling at the piers (A. 24-26, 57, 67, 152-153, 183). In many cases, "shipper's load cargo" and the container in which it was housed simply could be attached to the motor carrier's tractor and towed directly to its destination.[2]

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[1]The reasons for such reloading by motor-carrier employees, as shown by the references above, have always existed in the normal and regular conduct of surface-transportation operations.

[2]As the Administrative Law Judge summarized the evidence: "The advent of containerization in the ports of Baltimore and Hampton Roads did not change the traditional role of the ILA longshoremen. The motor carriers have treated import shippers' loads destined for consignees located more than 50 miles from the center of the port of entry much as they did break-bulk cargo. For, with very rare exceptions, motor carriers have frequently picked up the steamship company's containers mounted on wheeled trailers and hauled them to the consignee in accordance with the bills of lading. The motor carriers have also traditionally hauled such containers to their own truck terminals and have stripped the shippers' loads from them and are loaded into their own trailers, using truck terminal employees, whenever considerations of safety regulation, safety or economy persuaded a motor carrier to take that precaution" (App. E to Pet. at 164a).

"Shipper's load containers" always have moved through the New York, Baltimore and Hampton Roads ports without longshoremen handling their contents and without vessel owners, shippers or recipients having to pay or bear the costs of unnecessary "make-work" loading and unloading (A. 24-26, 152). Nevertheless, when some twenty years ago trailer-containers began to be used more extensively, ILA for the first time contended that all trailer-containers were "an extension of the ship's hold" and that longshoremen were entitled to unload the contents of all such containers at the piers (A. 121-122).

However, this contention on the part of ILA was resolved by an agreement and settlement in ILA's 1959 negotiations with New York Shipping Association, Inc. and by arbitration (A. 118-119, 150-152, 186-188). In such negotiations, as they pertained to "shipper's load containers", ILA gave up any possible claim that longshoremen were entitled to unload "that piece of the hold" (A. 121-122). The 1959 agreement, settlement and arbitration award stipulated that "shipper's load containers" would be granted "free movement" in return for royalty payments to ILA benefit funds (A. 150-152). Thus, the 1959 agreement substituted a royalty cost for any possible claim that longshoremen were en-

titled to unload the contents of "shipper's load containers" at the piers.

Prior to 1968, there were no written Rules on Containers for the Baltimore and Hampton Roads port areas (A. 161, 223). Nevertheless, these ports followed the New York practices and "shipper's load containers" moved on and off ships from and to motor carriers without longshoremen handling their contents (A. 25-26, 223). In 1968, ILA and New York Shipping Association, Inc. entered into a contract setting forth "Rules on Containers", which Rules also were incorporated in the 1968 contracts between ILA and Hampton Roads Shipping Association and Steamship Trade Association of Baltimore (A. 123-124, 235-242, 270-276). These Rules generally provided for loading and unloading of "LTL"[1] and "consolidated"[2] containers by longshoremen at the piers.[3]

Prior to 1971, CONASA was formed for the purpose of negotiating with ILA upon certain "master" issues, in behalf of shipping associations of six East-coast ports, including Baltimore and Hampton Roads (A. 17, 89, 136). Thus, a 1971 agreement between ILA and CONASA set out Rules on Containers which were binding at the six East-coast ports (A. 10, 136). These 1971 Rules were, for all purposes relevant to this case, identical to the 1968 Rules.

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[1]"LTL" refers to "less-than-truckload".

[2]Where the cargo items completely fill the container but are destined to more than one recipient.

[3]See, *e.g.*, Rules A and B (A. 235, 238-239).

None of these various versions or editions of Rules on Containers adopted by ILA and vessel-owner associations purported to make any claim whatever to the work of handling any "shipper's load cargo". The Rules definitely did not employ any language that could result in application of the Rules to "shipper's load" containers and cargo. The 1968 and 1971 Rules on Containers expressly and explicitly defined "the present work jurisdiction of longshoremen" as being "over any containers loaded with LTL cargo, or consolidated full container loads" (A. 235, 241; 243, 249; 270, 275). Other fundamental provisions of the 1968 and 1971 Rules further emphasized this limited work-jurisdiction claim, explicitly reciting that the Rules and ILA's claim of work jurisdiction applied only to containers which housed either "LTL" or "consolidated full" loads (A. 235, 238-239; 243, 247; 270, 272-273).

Both prior to the 1959 agreement and, consistent with their limited work-jurisdiction claim, after 1959, longshoremen never unloaded "shipper's load containers" at the piers (A. 24-26, 152). At all times, however, in connection with their over-the-road transportation of "shipper's load cargo", motor carriers continued to be confronted with the same operational and economic considerations which always had resulted in frequent reloading of various kinds of freight at trucking terminals (A. 23-24, 27-33, 83, 185-188). Vessel owners' trailer-containers also added new economic and operational considerations, including rental charges for the containers and the necessity for locating freight busi-

ness to permit utilization of the container as it was towed back to the port area (A. 28-29, 32-33). When various considerations dictated, the motor carriers continued to cause their employees to unload and reload cargo housed in the trailer-containers, just as they previously had reloaded their own equipment (App. E to Pet. at 164a; A. 23-24, 27-29, 32-33, 186-188).

Undeterred by all the foregoing circumstances, ILA and CONASA, during 1973 and again during 1974, entered into totally unprecedented agreements that their Rules on Containers would apply to "shipper's load containers". As clearly and explicitly provided in all of the agreements prior to the 1974 Agreement, the Rules and ILA's claim of work jurisdiction applied only to containers meeting *all* of three separate criteria (A. 235, 238-239; 243, 247; 270, 272-273). The most basic criterion was that the containers house either "LTL" or "consolidated" loads. In the 1973 "Dublin agreement", however, the 1971 Rules were "interpreted" by the ILA-CONASA Joint Committee on Containers to apply to containers meeting *either* of two expanded criteria, only one of which specified that the containers house either "LTL" or "consolidated" loads.[1] For the first time, "shipper's load containers" purportedly were included among the containers to which the Rules would be applied. Consistent with their "interpretation", ILA and CONASA purported to enact a new rule, restricting

[1]Interpretation 1.1 (A. 264-265).

handling of "shipper's load cargo" to ILA members and to employees of the shippers and recipients.[1]

The 1974 ILA-CONASA Agreement for the first time incorporated Rules provisions consistent with the 1973 "Dublin agreement". The 1974 Rules very clearly purported to apply to "shipper's load containers".[2]

Pursuant to these unprecedented agreements, fines of One Thousand Dollars were imposed upon vessel owners for each and every container in which the cargo was handled differently than the new Rules provided (A. 327-328). ILA and CONASA imposed such fines and caused cancellation of interchange agreements between vessel owners and motor carriers who saw fit to continue their established practice of handling "shipper's loads" and other cargo in connection with their routine over-the-road transportation operations (A. 29-30, 63-64, 327-329). ILA and CONASA thereby caused vessel owners to cease giving freight to motor carriers whose employees continued to handle "shipper's load cargo" and to cease furnishing such motor carriers with containers (A. 63-64, 186-187).

To strengthen enforcement of the new Rules, ILA and CONASA also provided for a "blacklist" of motor carriers who continued their reloading practices, specifying that any container "consolidated or distributed" by such motor carriers would be deemed a violation of

[1]Interpretation 1.1, Par. (b) (A. 264-265).

[2]Specifically, Rules 1(a)(3) and 2(B)(2) (A. 255-257).

the Rules (A. 264, 267-268). ILA and CONASA also agreed that any facility operated in violation of the Rules would not be "served" by any vessel-owner employer and that ILA would not supply labor to any such facility (A. 264, 267-268).

In the context of these developments, which at the time were totally unknown to Houff, Houff continued its practice of reloading "shipper's load cargo" at its trucking terminal (A. 23, 186-188). In early 1974, Houff picked up three "shipper's load containers" at the piers in Baltimore (A. 27-29). Such containers, which were destined to points in Virginia and West Virginia, were transported by Houff to its Baltimore terminal and there unloaded and the cargo reloaded by Houff's employees into its equipment (A. 27-28). These particular containers were unloaded because they were unsafe and heavier than permitted by Virginia weight laws and in order to minimize expenses of transporting the cargo on the highways (A. 28-29). ILA representatives learned of Houff's actions and caused the vessel owners which furnished the containers to be fined One Thousand Dollars in respect of each of the containers (A. 29-30). When Houff refused to pay the vessel owners for the ILA fines, the vessel owners cancelled interchange agreements with Houff and, by refusing to furnish containers to Houff, ceased doing business with it (A. 29-30). As a result, Houff's opportunities to transport "shipper's load cargo" were drastically diminished (A. 33-34, 186-187).

Upon all of the foregoing, Administrative Law Judge Wagman entered "rulings, findings, and conclusions" that the evidence demonstrated ILA and CONASA were engaging in violations of the Act as alleged by the charging parties (App. E to Pet. at 134a-184a). This Decision was affirmed by the Board's Decision and Order (App. E to Pet. at 110a-134a).

Pursuant to Section 10(f)[1] of the Act, ILA and CONASA petitioned the United States Court of Appeals for the District of Columbia Circuit to review and set aside the Board's Decision and Order. Pursuant to Section 10(e)[2] of the Act, the Board cross-applied for the Court of Appeals' enforcement of the Decision and Order.

A panel of the Court of Appeals, with one Judge dissenting, refused to enforce the Board's Decision and Order (App. A to Pet. at 1a-83a). Petitions for rehearing, and suggestions for rehearing *en banc* were denied, with four Judges voting in favor of rehearing *en banc* (App. C to Pet. at 87a-89a).

The Board, ILA, CONASA, Tidewater Motor Truck Association and Dolphin Forwarding, Inc. filed timely petitions for a writ of certiorari.[3] Houff filed a timely

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[1]29 U.S.C. §160(f) (1976).

[2]29 U.S.C. §160(e) (1976).

[3]Nos. 79-1082, 79-1036, 79-1035, 79-1099 and 79-1110, respectively.

cross-petition.[1] The Board's Petition was granted by Order of this Court dated January 21, 1980 (A. 635).

SUMMARY OF ARGUMENT

Clear and substantial evidence, on the record considered as a whole, inescapably dictated the Board's conclusions: (1) That ILA and CONASA entered into an unlawful agreement to cease doing business with motor carriers; and (2) That ILA illegally enforced said agreement.

The Board's conclusions might have been avoided *only* if substantial evidence had supported *findings* that the work of handling cargo in preparation for over-the-road transportation, in circumstances dictated by motor-carrier operations, economics and convenience, had once been work performed only by longshoremen. Substantial evidence supporting such findings might have led to conclusions that ILA's and CONASA's otherwise unlawful acts fell within a judicially-defined, narrow "work-preservation" exception to the provisions of Sections 8(b)(4) and 8(e) of the Act.

ILA and CONASA tacitly have conceded these points, having defended the unfair labor practice charges against them on the sole ground that their activities were in furtherance of "work preservation". ILA and CONASA contend that their 1973 and 1974 alterations to their Rules on Containers were directed to and affected *only* work which was traditional work of long-

[1]No. 79-1109.

shoremen, when such alterations purported to limit *any* handling of "shipper's load cargo" to ILA members and to shippers' and recipients' employees.

Precisely contrary to this present contention on the part of ILA and CONASA, the truth, as fully established by the record in this case, is that longshoremen had *never* engaged in such handling, nor in any equivalent handling. The record likewise establishes indisputably that motor-carrier employees have *always* engaged in handling "shipper's load cargo" *and* other cargo in preparation for over-the-road transportation, in circumstances dictated by the convenience and the operational and economic needs of the motor carriers.

Furthermore, ILA's and CONASA's "work-preservation" defense, in this case, must fail because ILA, as representative of longshoremen at the Baltimore and Hampton Roads ports, has repeatedly and explicitly waived and abandoned any *possible* claim to any work involving the handling of "shipper's load cargo".

Lastly, the facts pertaining to the work of handling "shipper's load cargo" in preparation for its over-the-road transportation clearly support enforcement of the Board's Decision and Order as it relates to such work, even if it shall be held that the Rules affecting "LTL" and "consolidated" cargo-handling are legitimate "work-preservation" agreements.

ARGUMENT

I.

In These Cases, An Unlawful Agreement Between Vessel-Owner Employer Associations And A Labor Organization, To Acquire Work Opportunities For Their Employees And Members By Means Of A Secondary Boycott, Has Been Upheld And Sanctioned By The Court Below

In these cases, only one defense has been made against the allegations that ILA and CONASA unlawfully agreed to cease doing business with Houff and others and that ILA illegally enforced such agreement. ILA's and CONASA's sole contention was that they sought only to secure to longshoremen work which was equivalent to that traditionally performed by longshoremen. Regardless of what may be the applicability of this defense to the facts in distinguishable cases, it is a defense wholly unavailing here, where the "work in controversy" is demonstrably exactly the same work which motor-carrier employees have always performed and is not functionally equivalent to any work that longshoremen have ever performed.

With all due respect, Houff urgently asserts that the Court of Appeals has misapplied its legal analysis to the facts of the present case. In effect, the Court's "work-preservation" analysis is applied so as to uphold a blatant "work-acquisition" agreement and an illegal secondary boycott.

A. Longshoremen Have Neither Performed the "Work in Controversy" Nor Any "Equivalent Work"

In the present case, the specific "work in controversy" is certain handling of "shipper's load cargo"—that is, cargo consisting of a single shipper's goods, housed in a large trailer-container for transportation by sea and land to a single recipient. The handling of such cargo is done in preparation for its over-the-road transportation. Such handling is sometimes, but not always, necessary in the conduct of surface-transportation operations. It is work that always has been performed by motor-carrier employees in the ordinary course of their daily duties, and never has been performed by longshoremen. This work is done without any additional charge to the vessel owner, shipper or recipient (A. 34-35, 62-63). Indeed, there has been an additional charge only when either a shipper or a recipient has specified that the motor carrier was *not* to reload the cargo (A. 26-27, 45). This additional charge has compensated the motor carrier for a net cost increase resulting from not reloading when it would be economically advantageous to reload (A. 27).

As the United States Court of Appeals for the Fourth Circuit succinctly has stated, in ruling that a preliminary injunction was proper *in the present case:*

> ". . . [I]t would seem evident that the 'stripping' of these full shipper's loads by the truckers is not part of the process of loading and unloading the cargo of ships; rather it is done to facilitate and as a part of

the motor carrier's task of transporting the goods from the pier to the consignee. Consequently (and not surprisingly), this work has traditionally been performed by employees of the motor carrier. It follows that such 'stripping' does not fall within the bounds of the longshoremen's traditional role and that the challenged rules are unlawful 'work acquisition' measures. . . ."

Humphrey v. International Longshoremen's Ass'n., AFL-CIO, 548 F. 2d 494, 499 (4th Cir. 1977)

The District of Columbia Circuit rejected the foregoing analysis, suggesting that longshoremen can handle "shipper's load cargo" at the piers, when and if any handling is required in preparation for over-the-road transportation, as readily as motor-carrier employees can accomplish such handling at trucking terminals. Thus, the Court below concluded that because longshoremen readily can perform, therefore they have the right to acquire and perform, work which is done only for the convenience of motor carriers or as a part of surface-transportation operations, and which was performed by motor-carrier employees long before vessel owners began to use trailer-containers. Such a conclusion, it is submitted, goes far beyond, and cannot be justified on, any "work-preservation" rationale.

ILA and CONASA have camouflaged such departure from "work preservation" to "work acquisition" with their unfounded assertion that the Board improperly

focused upon the work of motor-carrier employees after "containerization" rather than focusing upon the work of longshoremen before "containerization". The Board's analysis of longshore work both before and after "containerization" thoroughly refutes this assertion (App. E to Pet. at 139a-168a).

Because the work of handling cargo in preparation for its over-the-road transportation has always been accomplished either before or after longshore cargo-handling at the piers, and has always been done for reasons connected only with surface-transportation operations, the "work in controversy" was not, prior to "containerization", and is not now, "equivalent" to the loading and unloading of ships.

Nevertheless, the Court below adopted the previously repudiated view that a trailer-container can be nothing but an "extension of the ship's hold" and that the handling of container cargo, within an arbitrary radius of many miles of a port, is the same as unloading a ship. Any application of the "extension of the hold" concept to situations in other types of cases is totally inappropriate upon the facts and issues in the present case.

Moreover, as is argued below, longshoremen in return for royalty payments relinquished all *possible* claim to any handling of "shipper's load cargo" as it moved on and off ships. Certainly, however, there is no way that such relinquishment of claim can operate to extend the ship's hold into the surface-transportation industry where the loading and reloading of trailers is normal and basic work.

Indeed, in an earlier similar case, a different panel of the District of Columbia Circuit rejected the notion that a container can be nothing but an "extension of the ship's hold", by sustaining a decision in which the Board stated:

> ". . .[I]t is also true that the same container is part of a truck or perhaps a train. The traditional work of [longshoremen] has been to load and unload ships. To a large extent, the make-work rights claimed by longshoremen with respect to cargo placed on the dock were effectively bargained away. . . ."
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> *International Longshoremen's and Warehousemen's Union, Local 13 (California Cartage Co., Inc.)*, 208 N.L.R.B. 994, 85 L.R.R.M. 1300, 1302 (1974), *enf'd. sub nom. International Longshoremen's and Warehousemen's Union, Local 13 v. N.L.R.B.*, 515 F. 2d 1017 (D.C. Cir. 1975), *cert. den.*, 424 U.S. 942 (1976)

Thus, a "shipper's load container" hooked onto a motor carrier's tractor *is* the second half of an ordinary tractor-trailer tandem and is not, hypothetically, an "extension" of a ship. When a tractor is employed to pull the "shipper's load container" to a motor-carrier terminal for cargo-handling in preparation for over-the-road transportation, the trailer-container *is* likewise

half of an ordinary "city" or "local" tandem and is not, hypothetically, an "extension" of a ship.

Nevertheless, the Court below reasons that the challenged container rules are legitimate because the vessel-operator owners of the containers have a "right to control" them. It is first to be observed that the work of handling cargo is at issue in the present case — not the treatment of trailer-containers. Additionally, the container is *released* to the motor carrier, and the vessel owner, by the terms of the interchange agreement and bill of lading, retains neither control over nor responsibility for the "shipper's load container"[1] or its contents[2] (A. 48-49, 65-66, 189, 203).

Moreover, no false documentation is employed in this, because the cargo actually is transported to the recipient and to the precise destination specified in the documentation and the cargo is merely reloaded as specifically authorized by the bill of lading (A. 298-299 — Sec. 2.(a)).

Again, the vessel owners have never been in any position to control, or to give longshore employees, the work of handling "shipper's load cargo" in preparation for its over-the-road transportation, *because* vessel owners and

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[1]See A. 347, 353—Par. 4.1(a). This Paragraph is incorrectly reprinted and should read as follows: "User [the motor carrier] shall have the right of complete control and supervision of equipment while in its possession. . . ." See also A. 289, 291; 443, 445—Paragraph Fourth (e).

[2]See A. 298-299—Sec. 2.(a).

maritime operations have had nothing to do with determining *whether* such work would be done. The work is performed only when the motor carrier perceives a convenience or necessity in performing it, in the immediate conduct of surface-transportation operations.

The decision of the Court below would require motor carriers to make operational judgments and decisions at the piers and at the time that ocean-going cargo arrives at the piers, rather than at the motor carriers' terminals and at the time the cargo is to be transported over the highways. Thus, motor carriers' operations will suffer, because the cargo-handling is sometimes, though not always, necessary or convenient in the immediate conduct of surface-transportation operations.

As has been argued, the controverted cargo-handling always has been performed by motor-carrier employees in the ordinary course of their daily duties, as a part of routine motor-carrier overhead, and without any additional charge to the vessel owner, the shipper, or the recipient. Accordingly, motor-carrier employees, including those represented by other labor organizations, will be deprived of work they always have performed. Increased costs from additional handling inevitably will be passed on to shippers, recipients and the consuming public.

The ILA-CONASA Rules on Containers now permit loading and unloading of "shipper's load cargo" by employees of shippers and recipients, but not motor-carrier employees. Thus, ILA and CONASA apparently ac-

knowledge that longshoremen cannot fairly claim that *any* loading or unloading of "shipper's load cargo" is "equivalent" to the loading or unloading of ships.

Nevertheless, the motor-carrier employees' work of loading and unloading "shipper's load cargo" purportedly has been acquired by longshoremen and now is dubbed by ILA and CONASA as "shortstopping". Houff submits that this "shortstopping" characterization is an ILA-CONASA smoke screen deployed in an effort to misrepresent and conceal a preexisting work tradition. ILA and CONASA utterly failed to show any application of their 1971 Rules or earlier Rules to "shipper's load cargo" handling by motor-carrier employees. No tribunal has ever found any basis for such application. Indeed, and to the contrary, the Board found that ILA and CONASA never had any rule or understanding either forbidding or pertaining to the cargo-handling they now characterize as "shortstopping".

By the same process, ILA could assert that longshoremen are entitled to claim and acquire the "shipper's load cargo" handling now performed by employees of shippers and recipients. The Court of Appeals' decision herein would equally support such a claim, affecting a substantial portion of all ocean-going shipments. The extraordinary effects of such a decision previously have been noted:

> ". . . Although ILA does not now claim the work of stuffing and stripping shippers' loads, the logic of its position would support a claim for all container

work, without regard to the identity of the competing employees. As we noted in California Cartage Company, 'a boycott to enforce a claim to stuff shippers' loads and door-to-door deliveries would have an enormous impact on the shipping industry.' "

> *International Longshoremen's Ass'n., AFL-CIO (Consolidated Express, Inc.)*, 221 N.L.R.B. 956, 961 (1975), *enf'd. sub nom. International Longshoremen's Ass'n., AFL-CIO v. N.L.R.B.*, 537 F. 2d 706 (2nd Cir. 1976), *cert. den.*, 429 U.S. 1041 (1977), *rehear. den.*, 430 U.S. 911 (1977)

Finally, in addition to its contention that the legal analysis of the Court below has no true application to the facts here presented, Houff also respectfully submits that the Court's decision is in irreconcilable conflict both with a prior decision of the District of Columbia Circuit and with decisions of three other Circuit Courts of Appeals. *International Longshoremen's Ass'n., AFL-CIO v. N.L.R.B.*, 537 F. 2d 706 (2nd Cir. 1976), *cert. den.*, 429 U.S. 1041 (1977), *rehear. den.*, 430 U.S. 911 (1977); *International Longshoremen's Ass'n., Local 1575 v. N.L.R.B.*, 560 F. 2d 439 (1st Cir. 1977); *Humphrey v. International Longshoremen's Ass'n., AFL-CIO*, 548 F. 2d 494 (4th Cir. 1977); and *International Longshoremen's and Warehousemen's Union, Local 13 (California Cartage Co., Inc.)*, 208

N.L.R.B. 994 (1974), *enf'd. sub nom. International Longshoremen's and Warehousemen's Union, Local 13 v. N.L.R.B.*, 515 F. 2d 1017 (D.C. Cir. 1975), *cert. den.*, 424 U.S. 942 (1976).

B. Longshoremen Have Abandoned Any Possible Claim to Any Handling of "Shipper's Load Cargo"

The facts are that in 1959 and repeatedly thereafter longshoremen waived and abandoned any *possible* claim to the work of loading and unloading "shipper's load cargo". In 1973 and 1974, however, ILA sought to claim and acquire for longshoremen the "work in controversy"; that is, the work of loading and unloading such cargo in preparation for its over-the-road transportation—no matter that this work, both prior and subsequent to the "container revolution" in the maritime industry, had always been performed exclusively by motor-carrier employees, at trucking terminals, in the normal and regular conduct of surface-transportation operations—and never had been performed by longshoremen.

All the evidence plainly demonstrates that, prior to 1973, it was never contemplated or intended that longshoremen would handle "shipper's load cargo" for any reason. ILA's 1959 negotiations with New York Shipping Association, Inc. resulted in an agreement and settlement that "shipper's load containers" would be granted "free movement" in return for a royalty payment to ILA benefit funds upon every gross ton of cargo moving

in "shipper's load containers" (A. 152). Even if the "shipper's load container" were considered to be an "extension of the ship's hold", longshoremen gave up any and all possible claim of the right to unload "that piece of the hold" (A. 121-122). "Shipper's load containers" always had moved and after 1959 continued to move through the New York, Baltimore and Hampton Roads ports without longshoremen handling their contents and without vessel owners, shippers or recipients having to pay or bear the wage costs of unnecessary "make-work" loading and unloading.

Prior to the 1973 "Dublin agreement" and subsequent agreement upon the 1974 Rules, none of the various versions or editions of the Rules even purported to make any possible claim to any handling of "shipper's load cargo". The previous Rules decidedly did not employ any language that could result in application of the Rules to "shipper's load" containers and cargo.

Thus, even if the motor-carrier employees' work of handling "shipper's load cargo" in preparation for over-the-road transportation could be deemed in some way equivalent to longshore cargo-handling, any and all possible claim to the longshore cargo-handling was abandoned. Being, at best, premised on an abandoned claim, ILA's and CONASA's work-preservation defense is defective and its rejection by the Board should not be overruled.

The District of Columbia Circuit's enforcement of the Board's Decision and Order in *International Longshoremen's and Warehousemen's Union, Local 13 (California Cartage Co., Inc.), supra,* supports Houff's argument that longshoremen have abandoned any possible claim to any handling of "shipper's load cargo". In that case, the Board held that the Union's renewed work-jurisdiction claims, previously bargained away, could not be sustained. There, as here, the Union abandoned its work-jurisdiction claim in return for payments to its benefit funds. The Union sought to acquire work as to which it had thus abandoned any possible claim and was therefore held to have engaged in violations of Sections 8(e) and 8(b)(4)(ii)(B) of the Act.

In support of their work-preservation defense, ILA and CONASA have cited the Decision of the Administrative Law Judge in *International Longshoremen's Ass'n., AFL-CIO (Consolidated Express, Inc.), supra.* In a most pertinent passage, however, that Decision entirely supports Houff's waiver and abandonment argument.

> "Settled authority vindicates the right of a Union to preserve work which has been in its domain and which it has not lost or abandoned. But certainly, ILA, in view of its history, would not be able to reassert jurisdiction, for example, over the stuffing and stripping of containers containing shippers' loads after having expressly and explicitly abandoned that jurisdiction."
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> *International Longshoremen's Ass'n., AFL-CIO (Consolidated Express, Inc.), supra,* 221 N.L.R.B. at 974

In an attempt to avoid the consequences of ILA's abandonment of any *possible* claim to any work of handling "shipper's load cargo", ILA and CONASA have argued that there was never any agreement or practice which exempted all "shipper's load cargo" from handling by longshoremen. This argument was based upon record evidence that "shipper's load cargo" destined to warehouses in Hampton Roads and Baltimore formerly was handled by longshoremen. Upon such evidence, it was argued that there was no absolute "shipper's load" exemption from the Rules and that ILA never relinquished all possible claim of work jurisdiction over *all* "shipper's load cargo".

A first defect in this argument by ILA and CONASA, as noted by the Board, is that such contention can relate only to "shipper's load cargo" consigned to warehouses —and not to such cargo consigned to any other recipient. A second defect is evident upon the facts that uniform Rules, beginning in 1968, had been negotiated by New York Shipping Association, Inc. and by CONASA and were binding upon the Baltimore and Hampton Roads ports, as well as upon the New York port. Prior to the 1973 "Dublin agreement", "shipper's load cargo" destined to warehouses in Hampton Roads and Baltimore was unloaded by longshoremen, but such cargo destined to warehouses in New York was not unloaded (A. 148-149).

Longshore handling of "shipper's load cargo" destined to warehouses in Baltimore and Hampton Roads loses all significance on the record considered as a whole.

CONASA's President admitted that this practice in Baltimore and Hampton Roads had resulted from *misinterpretation* of the New York Shipping Association, Inc. and CONASA contracts (A. 148-149). Indeed, CONASA's President specified that both ILA and CONASA had always agreed that "shipper's load cargo" destined to a warehouse should move without any longshore handling, just as such cargo destined to a single recipient in another state moved without longshore handling (A. 148-149). Even ILA contended that a *correct* interpretation of the 1971 Rules would allow "shipper's load cargo" to go directly to warehouses without any longshore handling (A. 149). Upon these admissions, any reliance upon erroneous, mistaken and wrongful longshore handling of "shipper's load cargo" destined to warehouses is totally misplaced.

ILA and CONASA also have argued that the "Dublin agreement" merely gave effect to a version of the Rules which existed all along. Thus, ILA and CONASA witnesses offered various descriptions of an alleged pre-Dublin rule relating to "shipper's load cargo". Upon examination, it should be concluded that their attempts to identify such a rule were merely rationalizations for unlawful activities.

CONASA witnesses testified that when motor-carrier employees handled "shipper's loads", such loads became "consolidated" loads to which the Rules applied. These witnesses and others, however, ultimately admitted that "consolidated" loads are and always have been loads destined to more than one recipient (A. 133, 147,

168, 173). "Shipper's loads" handled by motor-carrier employees were still destined and went to single recipients. Additionally, when motor carriers caused "shipper's loads" to be loaded into their own trailers with additional freight, they did not cause freight to be consolidated in a *vessel owner's* container. Accordingly, and in any event, motor-carrier employees' handling of "shipper's loads" did not result in container loads to which any of the Rules formerly applied.

Thus, ILA and CONASA failed to show any application of the former Rules on Containers to "shipper's load cargo" handling by motor-carrier employees. No tribunal has found any basis for such application. Further, ILA and CONASA have hardly satisfactorily explained why a very simple rule could not have been adopted forbidding such handling by motor-carrier employees if such had, all along, been the intent of the parties.

ILA and CONASA also have contended that longshoremen, on occasion, may have handled "shipper's load cargo" at the piers. There was no substantial evidence supporting such contention. It would have been a simple matter for ILA and CONASA to have produced witnesses who could testify that longshoremen had engaged in such handling of "shipper's load cargo" if, in fact, they had. Yet, the only testimony concerning any handling of any "shipper's load cargo" was that such handling had resulted from shipper instructions that the cargo be handled at the pier, for distribution to *multiple* recipients, as in the case of "consolidated" cargo.

Finally, ILA and CONASA introduced bulky container-committee records in an attempt to show that the Rules, prior to the "Dublin agreement", had been deemed to apply to "shipper's load cargo". The record discloses that the number of containers utilized at the Baltimore port grew from approximately 4,000 in 1969 to approximately 25,000 in 1974 and that about eighty percent of such containers would have housed "shipper's load cargo" (A. 103-104). These containers were released at the piers to as many as one hundred separate motor carriers (A. 103). Thus, thousands of "shipper's load containers" were released to as many as one hundred separate motor carriers, many of whom reloaded their contents. Yet, container-committee records only included some fifteen contested matters during the years 1969 through 1972. In a number of these cases, no violation was found. Although it is "difficult to determine" whether any individual case "involved a shipper's load", only five cases might possibly suggest that the 1971 Rules had been applied to motor-carrier handling of "shipper's load cargo" (App. E to Pet. at 152a-153a; A. 103-104). The 1973 "Dublin agreement" was first discussed between September 11 and 13, 1972, at Miami Beach (A. 264). Houff submits that any and all "shipper's load" cases decided prior to September of 1972 were utterly groundless misapplications of the Rules. Given the warehouse misapplications, it is rather surprising that any "shipper's load" cases were isolated. CONASA's witness who had participated in such isolated cases believed that the fines were "illegal" (A. 104-108). Accordingly, substantial evidence, upon the

record considered as a whole, supports the findings by the Administrative Law Judge and the Board that there had been no 1971 Rule restricting handling of "shipper's load cargo" to ILA members and to shippers' and recipients' employees.

Upon all of the foregoing, clear and substantial evidence establishes that ILA waived and abandoned any *possible* claim to any work of handling "shipper's load cargo".

II.

The Court Below Should Have Enforced The Board's Decision And Order, Relative To "Shipper's Load" Cargo-Handling, Even If The Court Properly Upheld Rules Affecting Other Cargo-Handling As LegitimateWork-Preservation Agreements

As has been argued above, motor-carrier employees' handling of "shipper's load cargo", in preparation for its over-the-road transportation, is exactly the same work of loading and unloading trailers which always has been such employees' basic and normal work. It is not work that came into being after "containerization" but is work which routinely, and for many of the same reasons, had been performed before "containerization".

While it is true that work opportunities were diminished by "containerization", it was the work of loading loose cargo on and off ships which was eliminated and to which, in the case of "shipper's load cargo", longshoremen abandoned any possible claim. The motor-carrier employees' work of reloading cargo at trucking

terminals, having been performed to meet the objectives and requirements of motor-carrier operations, has always been accomplished either before or after the cargo has been loaded on or off ships—and has been performed both prior and subsequent to "containerization".

These facts certainly distinguish Houff's case from situations in which, because no separate and distinct work tradition existed, it could be argued that the "work in controversy" is work displaced by technological innovation or other circumstances.

To the extent that *other* employees have a separate or concurrent work tradition—as Houff's employees and all other motor-carrier employees have—such employees cannot be deprived of their work in the name of longshore "work preservation".

Thus, even though the 1968 and 1971 Rules on Containers had clearly and expressly provided for the loading and unloading of "LTL" and "consolidated" containers at the piers and had made a claim of work jurisdiction over such containers, it properly has been held that ILA could not coerce vessel-owner employers, and could not agree with CONASA, to cease doing business with other employers whose employees had established a work tradition of loading and unloading such containers (See, *e.g., International Longshoremen's Ass'n., AFL-CIO v. N.L.R.B.*, 537 F. 2d 706 (2nd Cir. 1976), *cert. den.*, 429 U.S. 1041 (1977), *rehear. den.*, 430 U.S. 911 (1977)).

The last-cited case, hereinafter referred to as the *"Conex"* case, decided issues relating to "LTL" and "con-

solidated" cargo-handling and may be distinguished from Houff's case, which involves only "shipper's load" cargo-handling. Any factual distinctions between *Conex* and Houff's case, however, are such that the *Conex* legal conclusions—that the very same unfair labor practices were being committed—are far more easily reached. Initially, it is indisputable that Houff's employees, and motor-carrier employees generally, had an applicable work tradition that pre-dated "containerization". Furthermore, it also is clear that longshoremen have abandoned any *possible* claim to any work of handling "shipper's load cargo".

The foregoing points specifically were observed in the Administrative Law Judge's Decision in *Conex,* which ILA and CONASA have cited in support of their "work-preservation" arguments. As quoted above,[1] this Decision specified that longshoremen had waived and abandoned any claim "over the stuffing and stripping of containers containing shipper's loads" and could not "reassert jurisdiction" over such work.

Accordingly, any factual distinctions between the *Conex* case and Houff's case would strongly militate in favor of enforcing the Board's Decision and Order in Houff's case. When the cases pertaining to the Rules on Containers have addressed the subject of "shipper's load" cargo-handling, they have with one accord supported enforcement of the Board's Decision and Order in this case.

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[1]Page 29 of this Brief.

Houff's case arose in Baltimore and Hampton Roads and involves only the work of handling "shipper's load cargo" in preparation for its over-the-road transportation. In the Court of Appeals, however, Houff's case was consolidated with cases which arose in New York and involve the work of handling "LTL" and "consolidated" cargo. Upon all of its foregoing arguments, Houff respectfully submits that—even if it be held the Court below properly sustained Rules on Containers affecting "LTL" and "consolidated" cargo-handling as legitimate "work-preservation" agreements—nevertheless, the Court should have enforced the Board's Decision and Order as it relates to motor-carrier employees' handling of "shipper's load cargo".

CONCLUSION

Upon all of the foregoing, Houff Transfer, Inc. respectfully prays that the judgment of the Court below be reversed and that the case be remanded to the Court below with directions that the Decision and Order of the National Labor Relations Board be enforced.

Respectfully submitted,

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October Term, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

TIDEWATER MOTOR TRUCK ASSOCIATION, HOUFF TRANSFER, INC., and DOLPHIN FORWARDING, INC.,
Respondents.

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATION, et al.,
Respondents.

BRIEF OF RESPONDENT TIDEWATER MOTOR TRUCK ASSOCIATION

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In the Supreme Court of the United States

October Term, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

TIDEWATER MOTOR TRUCK ASSOCIATION, HOUFF TRANSFER, INC., and DOLPHIN FORWARDING, INC.,
Respondents,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATION, et al.,
Respondents.

BRIEF OF RESPONDENT TIDEWATER MOTOR TRUCK ASSOCIATION

Counsel for Tidewater Motor Truck Association, Respondent herein, files this brief in support of the petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit filed by the Solicitor General on behalf of the National Labor Relations Board. We seek to have the opinion of the Court of Appeals reversed and the orders of the Board reinstated.

I. OPINIONS BELOW

The opinion of the Court of Appeals is not yet officially reported, but may be found in the National Labor Relations Board's Petition for a Writ of Certiorari at pages

1a-83a.[1] The decisions and orders of the National Labor Relations Board are reported at 231 N.L.R.B. 351 and 236 N.L.R.B. No. 42. Bd. Petition 11a; 90a.

II. JURISDICTION

The judgment of the Court of Appeals was entered on September 20, 1979. The Court of Appeals entered an order denying the Board's petition for rehearing on December 13, 1979. Bd. Petition 87a. The jurisdiction of the Supreme Court is invoked under Title 28 U.S.C. Section 1254(1).

III. QUESTIONS PRESENTED

The question presented by the Petitioner is:

Whether the National Labor Relations Board properly concluded that contractual provisions adopted by the union and the employer organizations to deal with containerization in the shipping industry enlarged, rather than preserved, work opportunities for employees represented by the union, and that such provisions therefore violated Section 8(e) of the National Labor Relations Act and that union action to enforce them violated Section 8(b)(4)(ii)(B) of the Act.

To answer this question, two more specific questions must be resolved:

1. Whether the International Longshoremen's Association by entering into agreements with the sea carrier employers of union members sought to acquire work which was not work traditionally performed at the seaport terminals by union members.

2. Whether, even if the contested work "belonged to" the International Longshoremen's Association, the sea carrier employers had the ability to control the contested work and provide it to longshoremen at the seaport terminals.

1. The decisions of the Board and the decision and judgment of the Court of Appeals are contained in the Board's Petition and are hereinafter cited as "Bd. Petition ....." Portions of the transcript in 5-CC-791, *et al.*, not contained in the Joint Appendix are hereinafter cited as "T. Bd. HR". Portions of the transcript in Joint Exhibit 1 in 5-CC-791, *et al.*, which are not included in the Joint Appendix are hereinafter cited as "T. E.D. Va. ....." All other references will be to the Joint Appendix filed in this Court and will be cited as "Jt. App. ....."

IV. STATUTES INVOLVED

The following relevant statutes appear at the indicated pages of the Joint Appendix:

1. Section 8(b)(4) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §159(b)(4). Bd. Petition 2-3.

2. Section 8(e) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §158(e). Bd. Petition 3.

V. STATEMENT OF THE CASES

This case involves attempts by the International Longshoremen's Association (ILA) to monopolize the work of loading and unloading (stripping and stuffing) large shipping containers within areas surrounding seaport terminals. Most containers are large metal boxes 20 to 40 feet long which can contain up to 40,000 pounds of cargo. They can be hauled on a wheeled chassis behind a truck tractor, carried on a railroad car, and stacked on a ship for efficient cargo movement. Steamship companies usually own the containers and lease them out to shippers who stuff them with freight and have them transported by motor carrier or railroad to the seaports for export sea movement. Imported containers are transported across land to the premises of the ultimate consignee or his agent, sometimes a

motor freight terminal or warehouse, where they are stripped. The technological advancement of containers has eliminated a great deal of the need to handle uncontainerized break-bulk cargo a piece at a time at the seaports by labor represented by the ILA. This has caused the ILA to require the steamship companies who employ ILA labor at the seaport terminals to agree to the Rules on Containers. These Rules require that the stripping and stuffing of most containers within 50 miles of the sea piers be performed on the piers by ILA labor, rather than at the off-pier premises of consolidators, motor carriers and warehousemen. These off-pier companies are in the business of stripping and stuffing containers with their own labor not represented by the ILA. The Rules force the shiplines companies to discontinue doing business with them in order to give this work to the ILA labor in violation of §§8(e) and 8(b)(4)(ii)(B) of the National Labor Relations Act.

A. Procedural Posture of the Cases.

This appeal arises from two cases brought before the National Labor Relations Board ("Board"). In the first case, the charging parties were Dolphin Forwarding, Inc. ("Dolphin"), and San Juan Freight Forwarders, Inc. ("San Juan"). Dolphin and San Juan are non-vessel ocean common carriers ("NVOCC") operating pursuant to the Shipping Act, 1916.[2] Both of these companies operated facilities in the Port of New York area where they consolidated less than full loads of goods from one shipper with the goods of other shippers into single full containers (known

2. 46 U.S.C. §§801 *et seq.*; The Federal Maritime Commission has held that NVOCC's are common carriers. FMC No. 73-17 (Sea-Land Service, Inc.), 46 C.F.R. §536.2(b) No. 74-40 (Puerto Rico Maritime Shipping Authority) (PRMSA) (1978). ALJ Decision p. 29.

as less-than-containerloads (LCL)) for more economical shipment by sea. Bd. Petition 93a.

The Council of North Atlantic Shipping Associations ("CONASA") is an employer collective bargaining association, whose membership consists of various shiplines company members, and their associations of shiplines companies, including the New York Shipping Association ("NYSA"), the Hampton Roads Shipping Association ("HRSA"), and the Shipping Trade Association of Baltimore, Inc. ("STA"). All shiplines companies and their associations will hereinafter be referred to as "sea carriers." The sea carriers' employees are covered by collective bargaining agreements with the ILA which represents virtually all of the employees working in the seaport terminals who load and unload the ships and perform related cargo handling. ILA members are employed directly by the sea carriers or stevedoring companies who contract their labor to the sea carriers. Bd. Petition 6a; 17a.[3]

The ILA claimed that the work of (stuffing) parcels of cargo into LCL containers belonged exclusively to the ILA, and that the Rules required that such work be performed by ILA members at the seaport terminals. Bd. Petition 93a-94a. When these Rules were enforced against the sea carriers, they were forced to cease doing business with Dolphin and San Juan. Dolphin and San Juan brought unfair labor practice charges against the ILA and the sea carriers alleging that the Rules were an unlawful hot cargo agreement in violation of Section 8(e) of the Act and their enforcement violated the provisions of

3. The ILA and Teamsters Union have apparently agreed that the line separating the work jurisdiction of each union regarding cargo handling is the outer perimeter of the seaport terminal, or at least where the cargo is placed on the truck. FMC No. 73-17 (Sea-Land Service, Inc.), No. 74-40 (Puerto Rico Maritime Shipping Authority) ("PRMSA") (1978). ALJ Decision at pp. 21-22.

Section 8(b)(4)(ii)(B) of the Act. The parties waived the making of findings of fact and conclusions of law and issuance of a decision by the Administrative Law Judge. Bd. Petition 91a. The Board considered the entire record made before the Law Judge and ruled that the object of the ILA's Rules and its efforts to enforce the Rules were directed toward acquiring work not historically performed by its members at the sea terminals, rather than to protecting traditional ILA work. Bd. Petition 94a-99a.

In the second case, Tidewater Motor Truck Association ("TMTA"), Houff Transfer, Inc. ("Houff"), and Associated Transport, Inc. ("Associated"), brought unfair labor practice charges alleging similar violations. TMTA is an association composed of twenty-eight members, including Associated, which are engaged in interstate motor transportation, warehousing and delivery of general freight and commodities within 50 miles of the Port of Hampton Roads, Virginia. Bd. Petition 138a-139a.

Houff is an ICC licensed motor common carrier with facilities located in five states, including a freight terminal in Baltimore, Maryland and one in Norfolk, Virginia. Jt. App. 22-23. It has operated its Baltimore facility since 1946. Jt. App. 33. It has operated its Norfolk facility since 1952. Jt. App. 33. Houff's employees, unrepresented by any labor organization, load and unload cargo from containers and trucks. Jt. App. 34-35. The distance travelled by Houff to final destination of most shipments ranges between 150 and 450 miles. Jt. App. 25.

Associated is also an ICC licensed common carrier which operated a motor freight terminal in Virginia Beach.[4] Jt. App. 56-57. Associated's drivers were represented by the Teamster's Union but the terminal employees were

4. Associated is no longer in business.

unrepresented. Jt. App. 57. The average distance of hauling performed by Associated was about 450 miles. Jt. App. 57.

The respondents in the *Associated* case were the ILA, and its locals, and CONASA, and its sea carrier members, including HRSA and STA. The charges alleged that the respondents violated Sections 8(e) and 8(b)(4)(ii)(B) of the Act by negotiating and enforcing the Rules, mainly with respect to stripping parcels from imported LCL and full shipper's load (FSL) containers away from the seaport terminals with non-ILA labor.[5] The Administrative Law Judge found violations of the Act had occurred. Bd. Petition 166a-168a. As in *Dolphin*, the Board affirmed because this work had not historically been performed by the ILA. Bd. Petition 115a.

The ILA and CONASA appealed the Board's decisions and orders in *Associated* and *Dolphin* to the Court of Appeals for the District of Columbia Circuit. The two cases were consolidated on appeal. Bd. Petition 2a. Houff intervened at the beginning of the Court of Appeals proceeding, and TMTA and Dolphin were permitted to intervene after the Court of Appeals had issued its decision. Bd. Petition 1a. San Juan and Associated did not intervene. By a two to one majority the Court of Appeals refused to enforce the Board's orders, because it found that the Board had defined the work improperly in reaching the conclusion that the contested work did not historically belong to the ILA:

> When defining the work in controversy . . . the Board settled on off-pier stripping and stuffing of containers.
>
> * * *
>
> Rather than define a category of work based on work patterns both prior and subsequent to the innovation

5. Full shipper's load containers are those which contain cargo from a single shipper.

[of containers], the Board has defined the work in controversy specifically in terms of the innovation, thus *by definition* removing any opportunity for the pre-innovation workers to preserve their work. Bd. Petition 46a-47a.

B. History of Cargo Handling in the Seaports and on the Land Beyond.

The development of containerization and the Rules agreements directed at limiting their use began in the Port of New York. This history, much of it preceding the chronology of events in these cases, has been extensively developed in the records of similar cases dealing with the issues involved herein.[6] The Court of Appeals for the District of Columbia Circuit criticized the Board for its alleged failure to focus in the present cases on the historical work of longshoremen along the whole eastern seacoast in determining whether the Rules were aimed

6. Other Circuits of the Court of Appeals have agreed with the Board that off-pier container stripping and stuffing was not the work of the ILA; and therefore, its efforts to claim this work violated the Act. *International Longshoremen's Association (Consolidated Express, Inc.)*, 221 N.L.R.B. 956 (1975), *enf'd*, 537 F.2d 706, 712 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977), *rehearing denied*, 430 U.S. 911 (1977) ("*Conex I*"); *International Longshoremen's Association, Local 1575 v. NLRB*, 560 F.2d 439, 447 (1st Cir. 1977); *Humphrey v. International Longshoremen's Association*, 548 F.2d 494, 499 (4th Cir. 1977). *See also, Consolidated Express, Inc. v. New York Shipping Association*, 602 F.2d 494 (3rd Cir. 1979), *petitions for cert. filed*, 48 U.S.L.W. 3001 (U.S. 1979) (Nos. 78-1902 and 78-1905), where the Court of Appeals sent the case to trial to determine liability and damages for the monopolistic impact of the rules, pursuant to Section 4 of the Clayton Act. 15 U.S.C. §15. With respect to similar claims for work made by International Longshoremen's and Warehousemen's Union on the west coast, the Board reached the same conclusion and was affirmed. *International Longshoremen's and Warehousemen's Union Local 13*, 208 N.L.R.B. 994 (1974), *affirmed per curiam*, 515 F.2d 1017 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 942 (1976) (*California Cartage*). *See also, International Longshoremen's Association (Shipside Packaging Co.)*, 227 N.L.R.B. 659 (1976).

at work protection or work acquisition. The factual resolutions by the Board in the present and other Board cases dealing with the same issues at other ports cannot be disputed. Since the Rules are being enforced on the entire eastern seaboard and gulf coasts and the Court's decision herein will uniformly affect the sea and land freight handling industries on both coasts, the broadest possible examination of the public record is desirable and we respectfully submit is permissible.[7]

1. The Traditional Methods of Break-Bulk and Containerized Cargo Handling by Longshoremen and Truckers.

Sea carrier employees represented by the ILA have traditionally loaded and unloaded all ocean transported break-bulk cargo to and from ships. ILA members have also traditionally moved break-bulk cargo between the end of the pier and the ship. Jt. App. 109-114.

Motor carriers have traditionally hauled break-bulk cargo to and from the seaport terminals for the shipper and consignee. Jt. App. 111-112. Shippers or their agents, known as brokers or freight forwarders,[8] have usually contracted with a licensed motor carrier to deliver export cargo to the pier. When the motor carrier reached the pier with export cargo an ILA clerk checked it in and directed the driver to the appropriate spot on the pier allocated for his cargo. Jt. App. 111-112. The truck driver moved

7. *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U.S. 63, 70-71 (1934); *Bienville Water Supply Company v. City of Mobile*, 186 U.S. 212, 217-218 (1901); *Muller v. Oregon*, 208 U.S. 412, 421 (1907).

8. A freight forwarder under the Shipping Act is in the business of "dispatching of shipments of any person on behalf of others, by accompanying common carriers . . . and handling the formalities incident to such shipments." 46 U.S.C. §801. They do not issue bills of lading in their own name. A land freight forwarder is similarly defined. 49 U.S.C. §10102(8).

the cargo to the tailgate of the truck where an ILA freight handler removed it from the tailgate. Jt. App. 112. Bd. Petition 140a. An ILA checker tallied the cargo and directed that it be bunched on pallets to conserve pier space. T. Bd. HR 575-576. After the cargo was palletized, an ILA forklift driver moved it from the pier to the sling with which it was hoisted into the hold of the ship. Jt. App. 113. Each piece of cargo was individually stowed by ILA members. Jt. App. 110.

For import break-bulk cargo the whole process was reversed. Jt. App. 110. Import cargo destined for delivery to several consignees by different motor carriers was sorted or separated for pickup by placing it on "marks". Jt. App. 110-111. Cargo moving from a single shipper to a single consignee required no sorting by ILA members and was all placed on one mark pending pickup by the trucker. T. Bd. HR 821.

Typically, the shipper retained a broker or agent in the port area who contracted with a motor carrier to pick up designated cargo at the pier. Jt. App. 57; 183. The broker issued a delivery order, showing where the shipment originated, its contents, and its destination. Jt. App. 24. The order instructed the sea carrier to deliver to the motor carrier the cargo listed in the order. T. Bd. HR 405; Bd. Petition 149a. The broker also provided the motor carrier with a bill of lading which identified the shipper, the number, weight and nature of the cargo, its destination, and whether the freight charges are collect or prepaid. T. Bd. HR 172; Bd. Petition 149a. A bill of lading is a contract between the shipper and the carrier establishing the rights and responsibilities of the carrier during movement.[9] Bd. Petition 149a. This contract re-

9. *Michigan Central Railroad Company v. Mark Owen & Company*, 256 U.S. 427 (1920); *U.S. v. Mississippi Valley Barge Line Company*, 285 F.2d 381, 390 (8th Cir. 1960); *Pennsylvania Railroad Company v. Greene*, 173 F. Supp. 657 (S.D. Al. 1959).

quires the carrier to be responsible for the cargo from the time the bill of lading is issued until the goods are delivered. Jt. App. 48-49; 72; 189. The motor carriers' bill of lading states: "Sec. 2(a) No carrier is bound to transport said property *by any particular schedule, train, vehicle or vessel. . .*" Jt. App. 299. (Emphasis added). No bill of lading covering sea movement is in evidence.

Containerization greatly changed the physical elements of cargo movement at the piers and beyond, but not the regulatory or contractual elements. Shippers who have full motor trailer loads usually truck them directly to the piers where the cargo is stuffed into containers by ILA members. When the shipper so designates, as occasionally happens, less than full loads of cargo are trucked to the pier where they are consolidated with cargo from another shipper into one container by the sea carrier using ILA labor. *Conex I*, 221 N.L.R.B. at 959, n.16. More often, however, shippers having less than full loads direct their goods to be delivered to a NVOCC, like Dolphin, having a facility near the pier. By consolidating the goods of more than one vender into a fully loaded container, the NVOCC can charge the vender a lower tariff rate than it would cost the vender to pay the sea carrier to move the less than full load. NVOCC's offer services not offered by sea carriers. NVOCC's prepare bills of lading, delivery orders, and other paper work necessary for cargo movement for land and sea. NVOCC's also issue through bills of lading covering the movement of the cargo from their facilities to the point where the consignee's agent accepts delivery. Such bills make the NVOCC responsible for the cargo the entire way, even during the ocean movement. The NVOCC thus became the primary water carrier which

subcontracts with the sea carrier for the water movement of the cargo.[10]

The procedure followed by motor carriers picking up containers from the import terminal differs little from that historically used for pick up of break-bulk cargo. The dispatching and checking is the same. The difference is that instead of ILA labor placing the cargo a piece at a time on the tailgate of the truck, the container is simply loaded on a wheeled chassis, owned by the sea carrier and leased as a part of the container, hooked to the motor carrier's truck, and driven away to its destination. JT. App. 43; 57-58.

The motor carriers and warehousemen have never had contracts with the ILA or sea carriers regarding how cargo will be handled after it is hauled from the seaport terminal, whether in break-bulk or container form. Bd. Petition 149a-150a. They have always handled cargo in their possession under their own bills of lading or through bills issued by NVOCC's without regard to the ILA or the sea carriers. Jt. App. 453-454.

Since the motor carriers lease the containers on their wheeled carriages from the sea carriers, the sea carriers will not turn a container over to a motor carrier unless prior to leaving the pier with the container the driver signs an "equipment interchange agreement." Jt. App. 29; 58; 64. The agreement sets out the rights and obligations of the lessee-motor carrier when it takes custody of the container. Bd. Petition 149a-150a. The agreement states that the motor carrier lessee shall:

> (e) have *complete control and supervisions of such containers* or chassis while in its custody and possession; *and shall control the detail of the work of any employee or agent operating or using said containers* or chassis during such time any person operating, transporting, in possession of, or using any such container or chassis after the signing of said Equipment Interchange Receipt and Inspection Report and until such form is again signed upon return of the container or chassis to the lessor is not the agent or employee of the lessor for any purpose whatsoever; . . . Jt. App. 413; Bd. Petition 151a-152a. (Emphasis added).

10. FMC Nos. 73-17 (Sea-Land Service, Inc.), 74-40 (Puerto Rico Maritime Shipping Authority) (1978).

In addition to this agreement, certain sea carriers including U.S. Lines, and several motor carriers, including Associated and Houff, have subscribed to a Uniform Intermodal Interchange Agreement. Jt. App. 347. The Intermodal Agreement provides in relevant part:

> 4.1 Responsibility of User in Possession of Equipment.
>
> a. User shall have the *right of complete control* and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same condition as received, ordinary wear and tear expected. Jt. App. 353. (Emphasis added).

Neither the interchange agreement, the bill of lading, nor the ICC regulations restrict the motor carrier's right to stuff or strip containers. Bd. Petition 149a. Ninety-nine percent of the time the sea carriers have no knowledge of whether the motor carrier intends to strip a container. Jt. App. 19.

Administrative Law Judge Wagman found:

> Frequently, after hauling a full shipper's load from a pier to its port area terminal, a motor carrier will utilize its own employees to strip the full shipper's

load from the container and stuff it into the motor carrier's container for transportation to the consignee. Bd. Petition 151a.

Motor carriers have stripped containers for years in the Hampton Roads port area. Jt. App. 45; 53; 74; 187. This stripping has frequently been performed by employees represented by the Teamsters Union which claims this work as Teamster work. Jt. App. 42-45; 57. However, with the adoption of the Rules the ILA claimed the right to strip all containers, whether LCL or FSL, coming through the ports destined for delivery inland beyond a 50-mile radius of the ports which were stripped within the 50-mile limit. Bd. Petition 148a. FSL containers stripped within the 50-mile limit were said to have been "short stopped" and were considered by the ILA to be treated as LCL containers. Jt. App. 127-128. The ILA also claimed that the Rules granted to its members the right to strip a container at any location, even hundreds of miles from the port area, whenever it is stripped before it reaches its ultimate destination. Jt. App. 41; T. Bd. HR 720. The Rules require the sea carriers to be the guarantors of this claimed right. T. Bd. HR 720.

Motor carriers strip containers for various reasons. First, some containers violate state highway and bridge weight restrictions. Bd. Petition 151a-152a. Second, they must be stripped for safety reasons. Bd. Petition 151a 152a. On many roads, particularly in the sharply curved mountainous West Virginia area and in wet weather, pulling a fully loaded container weighing 40,000 pounds is unreasonably hazardous. Jt. App. 28; 185-186. Third, considerations of economy many times dictate stripping of containers. Under the terms of the equipment interchange agreement a motor carrier pays a per diem rental charge for the leased containers. By transferring cargo to motor carrier equip-

ment and returning the sea carrier's container, a motor carrier reduces its costs. Jt. App. 29; 198-199. Fourth, some containers have a fifth wheel pin on their chassis which hits the wheels of a truck tractor. This contact will ruin two tires on certain tractors, and on others will totally prevent carriage. Jt. App. 32; 69. Finally, many containers are only 20 feet long. Conventional common carrier trailers have twice that capacity. With delivery by conventional equipment a motor carrier delivers cargo to a consignee's location and picks up another load in the consignee's vicinity for carriage on the return trip. If a sea carrier's 20 foot container must be used on such a trip, a motor carrier would have to return empty, return with half a load, or wait days or weeks until a load small enough to fit into the container became available. Even if such a load were transported it could generate only half of the revenue of a conventional full load. Jt. App. 32-33.

2. History of Containerization and the ILA Rules on Containers.

Some cargo has always been moved in shipping containers holding multiple pieces of cargo. Historically longshoremen have never broken open these containers and rehandled the cargo; they simply treated the container as one piece of cargo for purposes of loading and unloading and marking it for pickup by the motor carrier. Jt. App. 128-129. Large reusable containers measuring 8′ x 8′ x 10′, known as "Bowling Green Vans", were used to ship multiple pieces of cargo as a single container of cargo through the Port of New York prior to World War II. They were used for the carriage of personnel effects and were passed through the port without ILA stripping. Jt. App. 115-116. In the late 1940's "APL" containers, measuring 4′ x 6′ x 6′, were similarly used. Jt. App. 115. In

the 1950's longshoremen passed through the port of New York without stripping large cargo "Conex" containers measuring 8′ x 8′ x 8′, owned by the United States government and used for the transporting of military equipment. Jt. App. 115; 210. T. Bd. HR 636. Also in the early 1950's "Dravo" containers, measuring 8′ x 8′ x 8′, began to be used. Jt. App. 115; 150. Because cargo moved in Dravo containers required special protection, the individual pieces of cargo were stripped from the container at the pier by ILA members and put in a storage locker. Jt. App. 116.

By the late 1940's or early 1950's, companies unrelated to sea carriers employing laborers not represented by the ILA were soliciting, receiving and consolidating miscellaneous small shipments of goods and transported the loose cargo from off-pier facilities to the dock for shipment to Puerto Rico. With the advent of containerization, the same companies, now called NVOCC's or consolidators (such as Dolphin), stuffed these shipments of goods into containers at their off-pier facilities. The containers were then transported to the docks to be loaded aboard ship by longshoremen. The consolidators solicited their own consolidation work from their own customers.[11]

Consolidation in the "coastways business", along the east coast, began in the early 1950's, with the blessing of the ILA. The break-bulk transportation system could not economically compete with the rail industry for cargo transportation business on the eastern seaboard. According to ILA president Thomas Gleason:

> We gave them [the coastal container operators] freewheeling and they paid the royalty of $.28 a ton into a fund for us. T. Bd. HR 755-756.

11. *Consolidated Express, Inc.*, 221 N.L.R.B. at 956.

Shortly after the Dravo and Conex containers appeared in the Port of New York, cargo trade between Puerto Rico and the United States became completely containerized. Jt. App. 117. By 1957, the Pan-Atlantic Steamship Company, subsequently renamed the Sea-Land Steamship Line, was operating full containerships built to carry containers stacked on top of one another. Jt. App. 117. The ILA blessed this initial development of containerization:

> [T]here wasn't too much of a problem with the Puerto Rican [container trade], because they started it in an area where they didn't have too much work. They started it in Newark. And, therefore, it was a new operation to that group of people. The company started business and everybody that they hired was new. It was a job for someone for whom there wasn't that much work in the beginning. Okay. So it meant something to those people. Therefore, that operation got off the ground and got going because it started where it was started, with a group that was depressed. Jt. App. 117.

By 1959, fifteen to twenty years after the first reusable shipping containers appeared in the Port of New York, the ILA first negotiated with the sea carriers certain restrictions on the use of containers there. Jt. App. 119; Bd. Petition 14a-15a. This agreement made clear the sea carriers had the right to continue to use containers of any size without restriction on stripping and restuffing them by ILA labor at the pier. The ILA agreed that import or export FSL containers could move through the port without ILA interference. Jt. App. 119-120. The parties also agreed to certain ambiguous language relating to the contracting out by the sea carriers of stuffing and stripping work, but the provision did not address specifically the work performed on LCL containers by consoli-

dators, motor carriers or warehousemen working off the pier.[12] It was not until 1973 that the ILA specifically claimed in the Rules the right to strip and restuff all export LCL containers shipped by consolidators and took action to consistently enforce that claim.[13] The sea carriers agreed to contribute to a jointly administered fund certain royalty payments on containers passing through the port without being stripped or stuffed by ILA labor. Jt. App. 17-18. This agreement remained unchanged until 1968. When the 1959 agreement was negotiated ILA president Thomas Gleason reconciled himself to the fact that import FSL containers would move through the port areas without being stripped by ILA labor.[14] The 1959 contract terms for wages, hours and working conditions negotiated by the ILA and the NYSA were adopted by the parties in other North Atlantic ports, including Boston, Philadelphia, Baltimore, Hampton Roads, Providence and Portland, but the provisions relating to containerization were not adopted for those other ports. Jt. App. 120; T. Bd. HR 723.

Containerization in the Ports of Baltimore and Hampton Roads became significant in the early 1960's. Jt. App. 74; 78; Bd. Petition 139a-140a. The use of containers substantially reduced the cost of shipment at sea through reduction of the number of workers required to load and un-

12. *Consolidated Express, Inc.*, 221 N.L.R.B. at 960, 968.

13. Although limited ILA stripping and restuffing occurred between 1959 and the execution of the Dublin Supplement in 1973, these actions coincided with contract negotiations. The Board has held that the ILA in these circumstances acted merely to bolster its bargaining position. *Consolidated Express, Inc.*, 221 N.L.R.B. at 960, Bd. Petition 152a-153a.

14. "Q. But, Mr. Gleason, it is true that you were reconciled, were you not, to the fact that these containers were going to move from the dock on out to the consignee without any ILA labor? A. Yes, I guess I did. Q. You are reconciled to that fact and you were going to get a royalty on those containers that moved that way? A. Right." Jt. App. 155.

load ships, reduction of dockside ship tie up time, and reduction in loss of pilferage and damage at the port areas. Jt. App. 115; 205. The 1965 ILA agreement covering longshore labor in the Ports of Baltimore and Norfolk contained no rules directed toward containers. Bd. Petition 140a. From the outset of containerization in these ports it was the practice to have ILA labor strip import LCL containers and FSL containers stuffed at the export pier by ILA labor, but not other FSL or LCL containers. Bd. Petition 140a-141a. In the Port of Baltimore in 1974 FSL containers constituted 80 to 85 percent of all import container traffic. Bd. Petition 152a.

The 1968-71 collective bargaining agreement between the ILA and the sea carriers included a new provision requiring that all containers meeting the following criteria "shall be stuffed and stripped by ILA longshore labor . . . performed on a water front facility, pier or dock."

(1) Containers owned or leased by employer signatory members (including containers on wheels) *which contain LTL loads or consolidated full container loads.*[15]

(2) Such containers which *come from or go to any person* (including a consolidator who stuffs containers of outbound cargo or a distributor who strips containers of inbound cargo and including a forwarder, who is either a consolidator of outbound cargo or a distributor of inbound cargo) who is *not the beneficial owner* of the cargo.

(3) *Such containers* which come from or go to *any point within* a geographical area of any port in the North Atlantic District described by a *50-mile circle* within its radius extending out from the

15. Also known as LCL containers.

> center of each port. It is understood that the center of Hampton Roads will be defined as Middle Ground Light. Jt. App. 238-239; Bd. Petition 141a-142a. (Emphasis added).

Initially these rules were not claimed by the ILA to apply to any FSL containers destined for consignees or warehouses inside or outside the 50-mile limit. Jt. App. 12-14. The sea carriers very clearly understood in 1968 that the Rules applied only to LCL containers; it "wasn't conceivable" to the sea carriers that the rules could apply to FSL containers. Jt. App. 96; 98. The 1968 Rules agreement contained a requirement that the sea carriers pay the ILA a royalty of $1 per gross ton of containerized freight off loaded from a fully containerized vessel and passing through the pier free of stripping and stuffing by longshoremen. Jt. App. 236-237.

However, by 1969 ILA longshoremen in the ports of Baltimore and Hampton Roads were requiring stripping by ILA labor of FSL containers which were to be delivered within 50 miles of the ports to public warehouses, such as those operated by D. D. Jones Co., or to motor freight terminals, such as those operated by Associated and Houff. Bd. Petition 142a. The ILA's decision to strip these containers delayed the transportation of this cargo an additional five to eight days. Jt. App. 206. The cargo also suffered additional pilferage before it was released to the motor carriers. Jt. App. 205. The added expense of ILA stripping was estimated by one major shipper at $400 per container. Jt. App. 205. When agents for the shippers became apprised of the new ILA restrictions they diverted shipments to other ports, costing warehousing operations in Hampton Roads a great deal of revenue. Jt. App. 82-83. Allie S. McNeil, vice president of D. D. Jones Co., a local cartage and warehouse operation, and president of TMTA explained the impact:

> Well, it restrained our operations. It affected our growth, it affected naturally the business aspect of our company which had been in existence for almost 40 years. It caused us to lose a lot of accounts. Accounts would no longer use the area. Instead of using us as a public service company, they would take the goods to other facilities of their own or other outlying areas which would be greater distances from the port area. Jt. App. 77-78; 80.

This new ILA practice of stripping all FSL cargo destined for warehouses differed from the practice in New York during the same period where containers were permitted to go to warehouses without ILA stripping. Jt. App. 79; T. Bd. HR 819-820. ILA president Gleason recognized that "warehousing on certain commodities has been from time immemorial a part of the transportation business." T. Bd. HR 770.[16]

During the period of the 1968-71 collective bargaining agreement FSL containers, other than those moving to port area warehouses, passed through the ports of Baltimore and Hampton Roads without ILA stripping. Motor carriers like Associated and Houff continued to strip these containers at their own freight terminals within the 50-mile area, and restuff the cargo into their own road equipment for transport to the ultimate consignee's place of business. Jt. App. 54; Bd. Petition 151a-153a; 165a.

The ILA's 1971-74 collective bargaining agreements for the ports of Baltimore and Hampton Roads contained the same CONASA-ILA container rules as found in the 1968-71 New York agreements. The royalty provision for containers not stripped or stuffed by the ILA was increased to

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16. However, to Mr. Gleason, "bona fide" warehousing connoted a permanent inventory. T. Bd. HR 770-771. Bona fide warehousing later was redefined by the ILA to mean that FSL cargo had to remain in the warehouse for 30 days. T. Bd. HR 819.

$2.00 per gross ton. Jt. App. 245-247. During the early part of this period motor carriers in the ports of Baltimore and Hampton Roads continued to strip FSL containers, although the ILA continued to strip all FSL containers destined for public warehouses in these areas. Jt. App. 54; Bd. Petition 165a. At the same time, FSL containers continued to pass through the Port of New York to be stripped at both truck terminals and warehouses within two miles of the Port. T. Bd. HR 819-820.

CONASA and ILA representatives met in Dublin, Ireland in 1973 to focus on these two disagreements between the ILA and the sea carriers regarding containerization in all ILA ports: (1) ILA stripping and restuffing of containers consolidated off pier by consolidation companies operating export warehouses within 50 miles of the port; and, (2) ILA stripping of FSL containers bound for warehouses within the port areas. T. Bd. HR 677; 773.

Although no container rules had theretofore specifically addressed warehousing practices, the parties promulgated an "Interpretative Bulletin," known as the "Dublin Supplement", which set forth conditions which were supposed to conform the Baltimore and Hampton Roads ILA container handling practices to those followed in New York. Bd. Petition 144a-145a. The Dublin Supplement permitted FSL containers to pass through the ports, to a warehouse without ILA stripping if the cargo was to be warehoused at a "bona fide public warehouse" in the normal course of the beneficial owner's business; the beneficial owner of the cargo could not transfer title to its goods for at least 30 days; and the consignee had to pay at least 30 days storage fees. No language required physical storage for any length of time. The owner of the goods was also required to furnish documentation of compliance to the ILA-CONASA Container Committee. The Rules made it

clear that under no circumstances could a motor carrier freight transfer terminal be considered a bona fide public warehouse. Bd. Petition 144a-147a. The interpretation was supposed to relax the ILA work claims to FSL containers in the Ports of Baltimore and Hampton Roads. Jt. App. 79-80. Instead, the Dublin Supplement was interpreted by the ILA to mean that for the first time FSL containers could no longer pass through the ports on their way to destinations beyond the 50-mile limit, by way either of truck terminals or public warehouses without being stripped at the seaport by ILA labor. Jt. App. 151; Bd. Petition 165a-166a.

At least some sea carriers disagreed with the ILA's claim to the work of stripping and stuffing FSL containers in the Hampton Roads and Baltimore ports. As late as April 11, 1974, George Maier, port manager of U.S. Lines and an officer in various sea carrier associations, wrote a letter to Richard Hughes, administrator of the container royalty fund in Baltimore, in which he explained that a controversy existed as to the justification for container fines relating to motor carriers' stripping containers and transferring cargo to their own equipment. Jt. App. 93-94. Mr. Maier stated:

> It is a matter of record with the management structure of CONASA that the validity of these fines is in serious doubt. And it is now my understanding that there are also some doubts existent among ILA-CONASA representatives. Jt. App. 93-94.[17]

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17. The practice conformed to this understanding. As noted by Administrative Law Judge Wagman, the "paucity" of complaints concerning motor carriers stripping FSL containers supports the credibility of George Maier's testimony that the Rules were not to apply to FSL containers stripped by motor carriers. Between 1965-1974 the Joint Container Committees for Baltimore and Hampton Roads resolved various complaints alleging viola-

(Continued on following page)

The Dublin Supplement was included in the ILA collective bargaining contracts in Baltimore and Hampton Roads, effective October 1, 1974 through September 30, 1977. The contracts, for the first time since the advent of containerization in these ports, also subjected sea carriers to fines of $1,000 per container in the event LCL and FSL containers were stripped by motor carriers in the port areas by other than ILA labor. Although ILA fines were to be imposed on the sea carriers and not on motor carriers or warehousemen,[18] the sea carriers made clear their intent to pass any fines onto the motor carriers. T. Bd. HR 347; 415. The motor carriers and warehousemen objected and informed the sea carriers that they would not comply with the Rules or pay the fines. T. Bd. HR 416; G.C. Ex. No. 5.

Under the 1974-77 ILA-CONASA agreement, both parties retained the right to cancel and renegotiate the Rules on 30 days written notice. Jt. App. 260-261. In late March, 1975, the ILA notified CONASA of its intent to exercise this right, because the ILA alleged that motor carriers using freight terminals and warehousemen in Baltimore and Hampton Roads were not complying with the 30 day warehouse rule. The ILA claimed that

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Footnote continued—

tions of the Rules. In 1969 a single steamship company, U.S. Lines, handled 4,000 to 5,000 import containers in the Baltimore port of which 80 to 85 percent were FSL containers. By 1974, the same line handled 24,000 containers stripped at the pier. During this period only 26 complaints involved the stripping of 45 to 50 FSL containers by motor carriers. Prior to the September 11-13, 1972 meeting at Miami Beach only five complaints involving a total of eight containers were filed. The number of complaints filed in Hampton Roads was even fewer. Bd. Petition 152a-153a; 165a.

18. The ILA recognized the motor carriers and warehousemen had the right to strip and stuff the containers once they had possession of them, but such right didn't protect the sea carrier. T. Bd. HR 720.

any facility used to strip containers and restuff cargo into motor truck-trailers for shipment before 30 days of storage were phony warehouses. Bd. Petition 158a. On April 28, the Rules were suspended, and ILA labor began stripping all import containers of cargo destined to public warehouses within 50 miles of the center of the Ports of Hampton Roads and Baltimore, but not FSL containers destined to points beyond 50 miles which were picked up by an over-the-road carrier. Bd. Petition 158a-159a. The ILA's insistence on stripping containers destined to port area warehouses caused the same problems for warehousemen as the similar action had caused in 1969. Jt. App. 82. Cargo was delayed for up to a week; pilferage costs increased; shippers' agents diverted cargo from warehouses customarily patronized; and warehousemen again lost revenues. Jt. App. 82-83; 205.

On May 30, 1975, CONASA and the ILA executed a Supplemental Agreement which, they announced, "clarified and reinstated" the 1974 Rules. Bd. Petition 159a. To Rule 2 B(4) was added the condition that the warehouse receiving an unstripped FSL container must actually store the cargo for a minimum period of 30 days. An additional limitation was directed at motor carrier freight terminals to prevent them, for the first time, from stripping any containers:

> In keeping with prior CONASA-ILA decisions trucking stations where containers are unloaded within the geographic area do not constitute bona fide public warehouses even where cargo is destined for delivery outside the geographic area. Bd. Petition 159a-161a.[19]

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19. The Supplemental Agreement also added a new provision requiring royalty payments on containers passed through ILA manned ports via the "land-bridge" system, whereby shipment from a foreign origin to a foreign destination could be bridged across the U.S. by rail or motor carrier for further sea movement.

C. The Climax: Incidents Involving Dolphin, Houff and Associated.

1. Houff

On February 19, 1974, Houff picked up from the U.S. Lines at its Dundalk Marine Terminal in the Port of Baltimore two 20 foot FSL containers. The cargo was consigned to Union Carbide Corporation in Alloy, West Virginia, approximately 425 miles from the Baltimore port. Bd. Petition 153a-154a. Houff also picked up one 20′ full shippers load container from Lavino Shipping Company with cargo consigned to Merck & Company, Elkton, Virginia. Bd. Petition 154a. Houff determined that because the containers were overloaded, they violated West Virginia highway weight restrictions and were unsafe to drive through the mountains. Their rental was also a needless expense. Houff stripped the containers at its freight terminal within the 50-mile limit and reloaded the cargo into Houff truck trailers. Bd. Petition 154a. That same day the ILA learned that Houff had stripped the three containers.

The following day the ILA complained to the Container Committee that Houff had violated "the container agreement," and that liquidated damages of $1,000 and $2,000 were due the ILA from Lavino and U.S. Lines, respectively. Bd. Petition 154a. On March 21, the Container Committee determined that U.S. Lines had violated the contract as the ILA had alleged and assessed the requested fine. On May 10, the Committee found Lavino guilty of violating the Rules and assessed it a fine of $1,000. Bd. Petition 154a.

U.S. Lines and Lavino paid the fines to the Container Royalty Fund, and requested indemnification from Houff. U.S. Lines threatened to terminate Houff's interchange

agreement if Houff did not comply. Lavino even threatened to have Houff entirely banned from the port. Effective July 22, 1974, U.S. Lines terminated its equipment interchange agreement with Houff. Lavino terminated its equipment interchange agreement with Houff six months later. Bd. Petition 154a-155a. Since then, U.S. Lines and Lavino have refused to release containers to Houff. Bd. Petition 155a. As of September 17, 1975, Houff estimated that it had been unable to pick up more than 100 shipments as a result of cancellation of its interchange agreements. Jt. App. 186-187.

2. Associated

On September 24, 1974, Associated sent two truck tractors to the Marine Terminal in Norfolk, Virginia. The drivers presented delivery orders and bills of lading and picked up eight FSL containers from U.S. Lines. Five of these containers were destined to North Carolina and three to Tennessee. When the eight containers arrived at Associated's Virginia Beach Terminal, seven or eight miles from the seaport terminal, all eight containers were stripped by Associated employees and the cargo was reloaded into Associated's own road equipment for hauling to the consignee. Jt. App. 60-61; Bd. Petition 155a. On October 5, 1974, representatives from U.S. Lines and the ILA discovered that Associated had stripped the eight containers within the 50-mile limit. U.S. Lines was fined $8,000, which Associated refused to reimburse to it. Bd. Petition 156a. On February 15, 1974, U.S. Lines discontinued interchanging equipment with Associated, and formally terminated its interchange agreement with Associated on March 20, 1975. Associated was unable thereafter to pick up containers in the port. Jt. App. 63-64; Bd. Petition 157a.

3. Dolphin

Dolphin and San Juan operated solely as consolidators of export cargo in the port area of New York. Their customers shipped goods to their facilities where they were consolidated with goods of other shippers into LCL containers. The LCL containers were then trucked to the seaport terminals for sea movement. Beginning on August 27, 1974, and continuing through January 23, 1975, the ILA fined the sea carriers $47,000 for stuffing done by Dolphin and San Juan. When they refused to reimburse the sea carriers involved, they informed Dolphin and San Juan that they would no longer furnish them with containers or space aboard their vessels. Dolphin and San Juan moved their operations to Jacksonville, Florida, a port not then subject to the Rules. Bd. Petition 93a-94a.

Houff, Associated, TMTA, Dolphin and San Juan all filed unfair labor practice charges against the sea carriers and the ILA charging that the Rules violated §§8(e) and 8(b)(4)(ii)(B) of the Act. Preliminary injunctions under §10(l) of the Act, 29 U.S.C. §160(l), were sought in the United States District Court for the Eastern District of Virginia and for the District of Maryland. The District of Maryland granted the injunction. *Humphrey v. International Longshoremen's Ass'n,* No. Y-75-1395 (D. Md. March 25, 1976). The Eastern District of Virginia denied the injunction, but the United States Court of Appeals for the Fourth Circuit reversed and mandated that the injunction issue. *Humphrey v. International Longshoremen's Ass'n,* 401 F. Supp. 1401 (E.D. Va. 1975), *rev'd,* 548 F.2d 494 (4th Cir. 1977).

VI. SUMMARY OF ARGUMENT

The ILA Rules on Containers violate §§8(e) and 8(b)(4)(ii)(B), because an object of the Rules is to force the sea carriers to cease doing business with NVOCC consolidators, motor carriers and public warehousemen regarding the stripping and stuffing of certain containers within an arbitrary 50-mile radius of the seaports of New York, Baltimore and Hampton Roads. The ILA argues that it is merely trying to retain its traditional work of handling cargo on the pier which the development of containerization has caused to be moved inland to the facilities of consolidators, motor freight terminals, and public warehouses. The ILA argues that loading and unloading of containers off the piers is ILA work the same as mortising of doors was the work of job site carpenters in *National Woodwork Manufacturers Ass'n v. NLRB,* 386 U.S. 612 (1967).

However, it is error to characterize the contested work as handling cargo a parcel at a time, because this fails to take into account the complete elimination of traditional ILA work by containerization and the development of new and different work off its piers. The work at issue is the stripping and stuffing of containers within a functionally integrated rail-highway-sea container transportation system designed to move cargo without multiple handling of pieces of cargo. The container freight transportation system was designed to bridge individual parcel handling at many stages of the movement of goods from vender to ultimate consignee. The container system was designed to send the containers away from the seaport terminals to the premises of shippers and consignees or their agents to give them greater flexibility in moving goods across land and sea. Loading and unloading containers at certain key points in the transportation system (the premises

of consolidators, motor carriers and warehousemen) where containers were functionally designed to be stripped and stuffed, is work of a new and different nature and kind than the traditional ILA work.

Furthermore, most stripping and stuffing of reusable containers was traditionally done off the pier for at least 8 to 10 years before the ILA negotiated its first Rules seeking to acquire some of this work. In the Ports of Baltimore and Hampton Roads it was 18 to 20 years after containers were used before the ILA made any effort to try to monopolize stripping of FSL loads passing through the ports via motor carrier and public warehouse. The ILA's failure to claim this highly visible work evidences its recognition that the work was not its work. Identical work being performed in different bargaining units does not give one union the legal right to monopolize the work in another bargaining unit. Congress enacted §§8(e) and 8(b)(4)(ii)(B) to prevent unions, particularly in the freight transportation industry, from forcing employers to take work from other bargaining units and give it to them, simply because they had the power to achieve that objective.

The Board has developed complete records of the historical work patterns of the ILA and other concerned employees and has held that NVOCC consolidators, like Consolidated Express and Dolphin, are themselves customers of sea carriers and shippers, which perform their own work when they stuff containers for road and sea movement. *International Longshoremen's Ass'n (Consolidated Express)*, 221 N.L.R.B. 956 (1975); *International Longshoremen's Ass'n (Dolphin Forwarding, Inc.)*, 236 N.L.R.B. No. 42 (1978). For the same reasons the Board has held that the Rules can not be enforced against deconsolidation operations in Puerto Rico. *International Longshoremen's Ass'n, Local 1575 (San Juan Freight Forwarders, Inc.)*, 226

N.L.R.B. 34 (1976). The Board has similarly held that motor carriers and public warehousemen are consignees or their agents, which have always performed cargo handling, including the stripping of containers at their own facilities. *International Longshoremen's Ass'n (Associated Transfer, Inc., Houff Transfer, Inc. and Tidewater Motor Truck Association)*, 231 N.L.R.B. 351 (1977).

The Second Circuit Court of Appeals confirmed the Board's holding in *Consolidated Express, Inc.*, finding that the decision was supported by substantial evidence and was analytically sound; the traditional work of ILA members did not include stripping and stuffing of containers off the piers. *ILA v. NLRB*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977), *rehearing deined*, 430 U.S. 911 (1977). The First Circuit Court of Appeals reached the same conclusion in affirming the Board in *International Longshoremen's Ass'n, Local 1575 v. NLRB*, 560 F.2d 439 (1st Cir. 1977). The Fourth Circuit Court of Appeals, in mandating a §10(l) injunction against enforcement of the ILA Rules against Associated, Houff and TMTA held that the record in that case, virtually identical to the record below, required the conclusion that the traditional work of the ILA did not include the work of stripping and stuffing containers off the piers. *Humphrey v. International Longshoremen's Ass'n*, 401 F.2d 494 (4th Cir. 1977). Substantial evidence in the record of the case below amply supports the identical conclusion herein.[20]

Even if the contested work was traditional ILA work, the sea carriers have no power to control the work and

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20. Other Board cases have similarly struck down the Rules. *International Longshoremen's Association (Beck Arabia, Ltd.)*, 245 N.L.R.B. No. 172 (1979), *appeal docketed*, No. 79-1672 (4th Cir. Oct. 16, 1979) and *International Longshoremen's Association, Local 1408 (Puerto Rico Marine Management, Inc.)*, 245 N.L.R.B. No. 171 (1979), *appeal docketed*, No. 79-3444 (5th Cir. Oct. 16, 1979).

give it to the ILA or to prevent non-sea carrier employers from performing this work off the piers. The Court of Appeals erroneously held that because the sea carriers own the containers and have physical control of them while on the seaport terminal premises, they have the power to either permit ILA members to strip and stuff the containers at the piers or require their customers to accede to the conditions in the Rules for the privilege of leasing containers. Such control, the ILA argued, is like the control exercised by the primary employer of the job site carpenters in *National Woodwork* which could choose to continue to have the doors mortised on the job site, rather than at the manufacturer, pursuant to its agreement with the union.

However, the sea carriers do not have the legal right to control the containers as required by the Rules. The containers are part of the equipment and service provided by the sea carriers to customers. Sections 14 Fourth and 16 First of the Shipping Act, 1916, 46 U.S.C. §§812 and 815 (Shipping Act), prohibit the sea carriers from refusing to lease containers to any customers because they won't agree to the conditions in the Rules or to seek indemnification for fines paid on a discriminatory basis against lessees of the containers, within the 50-mile limit but not those outside the 50-mile limit. *Swayne & Hoyt, Ltd. v. United States,* 300 U.S. 297 (1937); *California v. United States,* 320 U.S. 577, *rehearing denied,* 321 U.S. 802 (1944); *FMB v. Isbrandtsen Co.,* 356 U.S. 481 (1958); *FMC v. Pacific Maritime Ass'n,* 435 U.S. 40 (1978); *Volkswagenwerk v. FMC,* 390 U.S. 261 (1968); *Grace Line, Inc. v. FMB,* 280 F.2d 790 (2d Cir. 1960), *cert. denied,* 364 U.S. 933 (1961); *Flota Mercante Grancolombiana, S.A. v. FMC,* 302 F.2d 887 (D.C. Cir. 1962). Containers constitute cargo space accommodations and a basic facility of transportation aboard containerships. *DuPont de Nemours Int'l, S.A. v. S.S. Mor-*

macvega, 493 F.2d 97 (2d Cir. 1974). The Federal Maritime Commission has closely examined the Rules on Containers, and held that a NVOCC is a shipper or consignee in relation to a sea carrier and cannot be treated on a discriminatory basis because of the Rules in relation to other shippers or consignees. Federal Maritime Commission Nos. 73-17 (Sea-Land Service, Inc.) and 74-40 (Puerto Rico Maritime Shipping Authority 1978), *appeal pending, CONASA and NYSA v. FMC,* No. 78-1776 (D.C. 1978).[21]

Moreover, the tariffs filed by sea carriers with the Federal Maritime Commission guarantee a variety of shipping services, deprive the sea carriers of the power to enforce the Rules. Under Tariffs existing in 1973 when the Dublin Supplement was negotiated, the sea carriers offered as service the right of shippers to stuff or strip containers away from the piers or ship them by through bills of lading through the sea ports to consignees or their agents. These tariffs prevented the sea carriers from thereafter giving the work of stripping and stuffing containers to the ILA members at the seaport terminals. Therefore, the sea carriers do not have the legal power to prevent the unconditional release of containers to shippers and consignees of their agents.

Furthermore, before the leased containers reach the sea terminals and after they leave there, the sea carriers

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21. In another case involving the Rules, Administrative Law Judge Norman D. Kline ruled in a proceeding before the Federal Maritime Commission that an attempt by a sea carrier to charge consolidators operating within the 50-mile radius a higher rate because of the Cost of the Rules was an unlawful attempt at a "group boycott aimed at one segment of the consolidation industry found to be serving the public interest by the Commission" FMC No. 77-23, Agreement No. 10294 (Dec. 13, 1979); exceptions filed on or about January 14, 1980.

have no power to prevent non-sea carrier employers from stripping and stuffing the containers. Consolidators, motor carriers, and warehousemen are not parties to the Rules agreement, and equipment interchange agreements do not control stripping and stuffing. Bills of lading issued by shippers such as NVOCC's and motor carriers pursuant to the Shipping Act and the Interstate Commerce Act, make these employers responsible for the content of the freight in the containers and give them free control over their stripping and stuffing. The sea carriers have no legal power to interfere with this control.

Because of the lack of the right to control the stripping and stuffing of containers the Supreme Court's decision in *NLRB v. Enterprise Association of Pipefitters*, 429 U.S. 507 (1977) mandates a finding that the Rules and their enforcement violate §§8(e) and 8(b)(4)(ii)(B).

VII. ARGUMENT

A. General Principles of Law and Reversible Errors of the Court of Appeals.

Section 8(e) of the Act was passed to prevent unions from negotiating "hot cargo" agreements to achieve the objectives proscribed by §8(b)(4)(ii)(B). The language of §8(e) is broad, and on its face reaches the Rules in this case. By their terms and effect, the Rules require the sea carriers "to cease doing business with" consolidators, warehousemen, and motor carriers. Nevertheless, the Supreme Court has interpreted §8(e) narrowly, finding that "Congress in enacting §8(e), had no thought of prohibiting agreements directed to work preservation;" its objective was to prevent "agreements which obliged neutral employers not to do business with other employers involved

in labor disputes with the union". *National Woodwork Manufacturers Ass'n v. NLRB*, 386 U.S. 635, 636 (1967).[22]

Section 8(b)(4)(ii)(B) was designed to prohibit a union from enforcing an agreement proscribed by §8(e), or otherwise to engage in or threaten, coerce, or restrain any person where "an object" thereof is to force any person "to cease doing business with any other person." All that is necessary for a violation of §8(b)(4)(ii)(B) is that an objective, though not necessarily the only objective, of the union's secondary action is to force the contracting neutral employer with whom the union has a secondary dispute to cease doing business with the employer with whom the union has a primary dispute. *National Woodwork*, 386 U.S. at 612; *Enterprise Association of Pipefitters*, 429 U.S. 507, 530, n.17 (1977); *NLRB v. Denver Building and Construction Trades Council*, 341 U.S. 675, 689 (1951).

It has been settled beyond dispute that no matter how compelling the reasons a union and an employer cannot lawfully negotiate an agreement proscribed by §8(e), or enforce one valid under §8(e) by means that would violate §8(b)(4). *Enterprise Association*, 429 U.S. 514-521; *National Woodwork*, 386 U.S. at 634; *Local 1976, United Brotherhood of Carpenters v. Labor Board*, 357 U.S. 93 (1958) (*Sand Door*). The Court of Appeals recognized this principle, even in erroneously deciding that the Rules did not violate the Act. Bd. Petition 61a.

There is no dispute regarding most of the other elements of §§8(e) and 8(b)(4)(ii)(B). The Rules are an agreement

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22. Justice Stewart dissented, reasoning that product boycotts for work preservation purposes were intended to be proscribed by §8(e) because they "are likely to be permanent, and the restraint on the free flow of goods in commerce is direct and pervasive, not limited to goods manufactured by a particular employer with whom the union may have a given dispute." 386 U.S. at 656.

which expressly require that LCL and "short stopped" FSL containers be stripped and stuffed "only at a waterfront facility by deepsea ILA labor." Rule 1(a), Jt. App. 255. This agreement expressly prevents the sea carriers from doing business as they have been with consolidators, warehousemen and motor carriers. The Rules provide for "liquidated damages," clearly a punitive fine, and by the threat of strike if the fines are not paid by the sea carriers. The fines had their intended effect when the sea carriers ceased to do business with Associated, Dolphin, and Houff. These companies were presented with a choice of paying for the fines or choosing the similar injurious alternative of ceasing to do business with the sea carriers.

Fines are a type of economic pressure proscribed by the Act. *Electro-Coal Transfer Corp.*, 591 F.2d 284 (5th Cir.), *rehearing and rehearing en banc denied*, 595 F.2d 1221 (1979); *Associated General Contractors of California, Inc.*, 514 F.2d 433, 438-39 (9th Cir. 1975); *Carrier Air Conditioning Co. v. NLRB*, 547 F.2d 1178, 1193 (4th Cir. 1976). In *Electro-Coal* the ILA demanded that a sea carrier with which it had a work protective agreement make a payment for wages lost by ILA members in the Port of New Orleans because non-ILA labor employed by subcontractor Electro-Coal was used to load a ship. The Court of Appeals held:

> The employers [sea carriers] thus pay double labor costs for the privilege of loading at Electro-Coal. We do not think any company could continue such an arrangement except for the most compelling business reasons. The reasons here are found in the employers' need to meet large grain export commitments. The demand for settlement payments was coercive within the meaning of §8(b)(4)(ii)(B), and it was unlawfully coercive if undertaken to achieve a secondary objective. 591 F.2d at 289.[23]

Thus, the only disputed legal element to be resolved by the Supreme Court is the pivotal question of whether there was substantial evidence to support the Board's finding that "an object" of the Rules was proscribed by the Act. The Supreme Court has established guidelines for determining the real object of a union's attempt to claim work. The Court held:

> There need not be an actual dispute with the boycotted employer, here the door manufacturer, [herein the consolidators, warehousemen and motor carriers] for the activity to fall within this category, so long as the tactical object of the agreement and its maintenance is that employer, or benefits to other than the boycotting employees or other employees of the primary employer *thus making the agreement or boycott secondary in its aim.* The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer vis-a-vis his own employees. *National Woodwork*, 386 U.S. at 645. (Emphasis added).

The Court has directed that object not be defined, "without an inquiry into whether under all the surrounding circumstances, the Union's objective was preservation of work [in the bargaining unit] . . . or whether the agreement and boycott were tactically calculated to satisfy union objectives elsewhere." 386 U.S. at 644. The Court suggested that as a general proposition "such circumstances might include the remoteness of the threat of displacement

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23. Electro-Coal brought the suit to recover damages under §303 of the Act for the secondary boycott. The Court of Appeals remanded the case to the district court for further development of the record on the scope of the traditional work of the ILA.

by the banned product or services, the history of labor relations between the union and the employers who would be boycotted, and the economic personality of the industry." 386 U.S. at 644, n.38.

In its reconfirmation of *National Woodwork*, the Court approved of another criteria for determining the real object of the work acquisition efforts. In *Enterprise Association* the Court held that when factory piped heating and air conditioning units had been specified by the general contractor to be installed on the job site, the subcontractor employer had no choice but to install them; and it was without power to meet the work preservation demands of its employees to have them cut and thread pipe for the units as they had historically done. The Court found, therefore, that "an object" of the inducement and the coercion was to cause the subcontractor to cease doing business with the primary contractor in order to influence the primary contractor to specify different equipment. The "control" standard was held to be merely a part of the "totality-of-the-circumstances test recognized in *National Woodwork*." 429 U.S. at 524.

The Court of Appeals misapplied the teachings of *National Woodwork* and *Enterprise Association* in three main respects. First, the Court improperly substituted its judgment for that of the administrative agency having expertise in resolving disputes arising out of competing claims for work. Second, the Court of Appeals misdirected the focus of examination of the contested work, solely the scope of the traditional work duties performed by the ILA. Third, the Court of Appeals misconstrued or ignored the elements of control which require, as a matter of law, a finding that an object of the Rules was to exert pressure upon sea carriers to provide work to the ILA which they had no power or authority to give. If the Court agrees with any of these grounds, it must reverse the decision below.

B. The Court of Appeals Erroneously Substituted Its Judgment for the Opinion of the NLRB As to the Work and Total Circumstances.

The Court of Appeals improperly substituted its judgment for that of the Board in defining the ILA's traditional work and applying the surrounding circumstances test to determine the true objective of the Rules and the ILA's efforts to enforce them. In *Dolphin* the Board held that "traditionally the off-pier stuffing and stripping of containers was performed by consolidating companies and not longshoremen." In *Associated* the Board reached the ultimate conclusion that "Respondents' members here, as in *Consolidated Express*, had *not* historically done the work." Bd. Petition 116a. The Board noted that irrespective of its decision in *Consolidated Express*, "the Administrative Law Judge fully developed the facts here to support the violations which he found." Bd. Petition 115a.

The Court of Appeals erroneously chose to characterize these largely factual findings as legal conclusions. It said its "conflict with the NLRB is exclusively focused on the Board's misinterpretation and misapplication of the prevailing law—the doctrine of work preservation," because when the Board defined the work in controversy it "settled on off-pier stripping and stuffing of containers" as the definition of the work in controversy, rather than focusing on the "traditional work patterns" of longshoremen in loading and unloading ocean borne cargo into and out of the hold of the ship. Bd. Petition 51a. The Court of Appeals did not find that the Board did not consider the historical work practices of the ILA members. It simply reached a different conclusion than the Board as to what was the ILA's traditional work. The Court erred in doing this. So long as the Board's definition of the contested work was supported by substantial evidence on

the record as it was and there was a rational basis for the Board's decision, as there was,[24] the Court of Appeals was not authorized to substitute its judgment for that of the Board. Such was the teaching of *Enterprise Association*, 429 U.S. at 531-32; and *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951).

The Court of Appeals for the First and Second Circuits found on similar records that the Board's determinations that traditional ILA work was limited to seaport terminal premises, and therefore the Rules violated the Act, were supported by substantial evidence. *International Longshoremen's Ass'n, Local 1575 v. NLRB*, 560 F.2d at 448 (1st Cir. 1977); *Consolidated Express, Inc.*, 537 F.2d at 706, 712 (2d Cir. 1977). The Court of Appeals below should have held the same.

C. The Object of the Rules Was to Acquire New Work Not Traditionally Performed by ILA Members.

1. The Scope of the Traditional Work to Be Protected.

The Court of Appeals found that the Board improperly failed to focus on the appropriate definition of the protectible work. It suggested that the Board might have reached a "different categorization for the work in controversy" had it focused on defining "a category of work based on work patterns both prior and subsequent to the innovation," and had not "define[d] work in controversy specifically in terms of the innovation, thus *by definition* removing any opportunity for pre-innovation workers to preserve their work." Bd. Petition 47a. The Court suggested that the proper definition of the contested work is "loading and unloading of ocean-borne cargo, with its directly related peripheral tasks such as sorting cargo. Bd. Petition 51a. We disagree with the narrow focus of this definition.

24. The Board of Appeals for the District of Columbia has recognized that its function is to determine only whether the Board had a "rational basis for its decision." *International Ladies' Garment Workers Union v. NLRB (McLoughlin Mfg. Corp.)*, 463 F.2d 907, 919 (D.C. Cir. 1972).

In *Dolphin* the Board held that the stuffing of containers for export by the NVOCC was not traditional longshore work, relying on its analysis of the identical work in *Consolidated Express, Inc.*, wherein it held:

> It is clear from the record that *the work in controversy here is the LCL and LTL container work performed by Consolidated and Twin at their off-pier premises.*
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> * * *
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> The traditional work of the longshoremen represented by ILA has been to load and unload ships. When necessary to perform their loading and unloading work, longshoremen have been required to stuff and strip containers on the piers.
>
> Similarly, for many years, maritime cargo has been sorted and consolidated off the docks for companies employing teamsters and unrepresented employees. With the advent of vessels designed exclusively to carry the large containers presently in use, these consolidating companies such as Consolidated and Twin, have continued to consolidate shipments into containers prior to their placement aboard the vessels. *The consolidators generate such work themselves, performing it not on behalf of the employer-members of NYSA but for their own customers who have goods to ship.* Furthermore, they perform this consolidation work at their own off-pier premises, with their own employees who are outside the unit represented by ILA,

and who fall within the coverage of separate collective-bargaining agreements, under which they are represented by other labor organizations. It is clear, therefore, that Consolidated and Twin have traditionally been engaged in the work of stuffing and stripping containers such as are here in controversy.

From the foregoing and the record as a whole, it is clear that the *on-pier stripping and stuffing work performed by longshoremen as an incident of loading and unloading ships does not embrace the work traditionally performed by Consolidated and Twin at their own off-pier premises.* It does not fall within ILA's traditional role to engage in make-work measures by insisting upon stripping and stuffing cargo merely because that cargo was originally containerized by non-unit personnel. Yet, ILA's demands here could only be met if the work traditionally performed off the pier by employees outside the longshoremen unit were taken over and performed at the pier by longshoremen represented by ILA. 221 N.L.R.B. at 959-960. (Emphasis added).

In *Associated,* a case involving stripping of import containers by motor carriers and warehousemen, the Board adopted the Administrative Law Judge's decision that:

> The history of the longshoremen's work tradition in Baltimore and Hampton Roads shows that their role in handling break-bulk import cargo ended at the head of the pier, where an ILA freight handler picked up the cargo and loaded it onto a truck. Thereafter, the fate of that cargo was the responsibility of the motor carrier, as set forth in the bill of lading.
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> * * *
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> From the foregoing and the record as a whole, I find that the traditional on-pier work of longshoremen has not included the work performed by the employees of motor carriers, as Associated and Houff, at their off-pier facilities. Bd. Petition 164a-165a.

Laying aside for a moment the geographic location of the work, it is clear that at least the contested work is the loading and unloading of containers, not the loading and unloading of a ship tied at the pier. It is the loading and unloading of containers, not break-bulk work, which the ILA feels should be performed by its members.

There is no dispute that the ILA traditionally performed the work of loading and unloading of ships a parcel at a time. This work is still being performed by the ILA when it handles break-bulk cargo or loads or unloads a container from a ship. However, employees of consolidators loaded consolidated freight into containers for years before the container revolution occurred. Employees of motor carriers and warehousemen traditionally unloaded cargo, stacked it, sorted it, and reloaded it into trucks in a similar manner as the ILA members performed this work at the seaport terminals. It is clear that the ILA's work jurisdiction is limited to the seaport terminal premises,[25] and it does not contend otherwise herein.

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25. The 1968-1971 collective bargaining agreement covering the Ports of Baltimore and Hampton Roads, in which the Rules were first incorporated for those ports, the scope of its traditional ILA work was stated to be limited to "all work of rigging and unrigging of cargo . . . vessels and the loading and discharging of their cargo . . ."; and the Rules "are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts *at deep sea piers or terminals.*" Jt. App. 235; 238. This scope of work remained unchanged in the 1971-1973 agreement. Jt. App. 243. It wasn't until the 1974 agreement that the ILA expanded the definition of the scope of work clause to include: "All stuffing and stripping, handling and movement of containers at waterfront facilities within a 50-mile radius from the center of the port of Hampton Roads . . ." Jt. App. 251-252. However, even in that agreement the preamble to the Rules stated that they covered "all container work at a waterfront facility . . .", defined as: "a pier or dock where vessels are normally worked including a container compound operated by a carrier or direct shipper." Jt. App. 254.

Historically, prior to development of the modern container, ILA members never broke open and handled contents of large shipping containers holding multiple parcels, which were shipped by venders, consolidators or freight forwarders. Furthermore, large reusable containers have been used to consolidate and ship individual parcels by sea since at least the 1940's. Except when security required ILA stripping at the pier, these containers passed through the seaport terminals without ILA stripping and stuffing. Therefore, historically, stripping and stuffing of large reusable and non-resulable containers, containing individual parcels, was not traditional ILA work on or off the pier.

Containerization first began to blossom as a new industry, based on specialized container equipment and shipping services, in the early 1950's with the "coastways business". NVOCC companies, which had been specializing in soliciting customers to ship through them less than full loads, at lower full load rates, were encouraged to develop their business to compete with the railroad industry. The ILA blessed the development of this "new" transportation system, because it did not infringe upon the ILA's traditional break-bulk work at the seaport terminals. Jt. App. 117. By 1957 full use was being made of the new container transportation system be' veen consolidators and deconsolidators.

The container transportation system was not started as a substitute for the business of transporting cargo by sea or for the purpose of competing with the sea carriers. It was started and has since operated as a parallel industry to the break-bulk shipping service traditionally offered by the sea carriers. Sea carriers, unlike NVOCC's do not solicit less than full load cargo for consolidation; they do not prepare all the related shipping papers; they do not ship

or receive containers as the consignor or consignee; they do not warehouse goods; and they do not perform other customer services performed by NVOCC's, warehousemen and motor carriers.

Containerization has simply forced the sea carriers out of the business of handling some cargo a piece at a time at the seaport terminals. But, the sea carriers have not subcontracted out the work of ILA labor.[26] The sea carriers enjoy no profit on the performance of the service of stripping and stuffing containers off the pier. This profit is enjoyed by the charging party employers. Nor is this a case where outside employees are coming into the bargaining unit and performing bargaining unit work belonging to the ILA.[27] This case is also not a model of the type found in *National Woodwork*. There, work performed exclusively on the job site was, in effect, farmed out to a manufacturing company. The work was there incorporated into a product, in the same manner as could have been done on the job site, and then brought back into the bargaining unit for its ultimate use on the job where the bargaining unit worked.

In the present case, a new and different model of work exists. A whole new freight transportation system has de-

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26. Board holding in *Dolphin*. Bd. Petition 95a-96a.

27. For an example of this model see *Canada Dry Corporation v. NLRB*, 421 F.2d 907 (6th Cir. 1970), wherein the union of employees of supermarkets in the Detroit metropolitan area negotiated a contract with the supermarket association which contained an agreement that prevented salesmen of certain venders from shelving their products and performing the related tasks in the unit they previously had performed. The Court of Appeals held this was a lawful work preservation agreement because the contested work was located within the geographic bounds of the bargaining unit and was similar to the work being performed by the unit employees. The same distinction applies to *Meat and Highway Drivers, Local 710 v. NLRB*, 335 F.2d 709 (D.C. Cir. 1964) where the union sought to reacquire the work of delivering meat which work had been removed from Chicago by the same employers. The packers had then shipped the meat back into the geographic jurisdiction of the union by other drivers.

veloped which bridges over and completely eliminates the work historically performed in the bargaining unit. Labor services, formerly performed at the piers by ILA members, have been eliminated, but they have not been replaced by other labor performing a preliminary step of the work on a product to be installed at a job site by job site workers, as in the *National Woodwork* model. No work required for the job site has been performed off the site and brought back. No ILA work has transferred away from the piers which can, if the container system is to work as designed, be performed on the pier.

Containerization has not changed the basic functions of the parties. Sea carriers continue to perform their primary business of hauling cargo by sea, as motor carriers haul cargo by road, and the railroads haul cargo by rail. NVOCC's continue to consolidate and ship cargo, and warehousemen continue to receive the cargo and store it or forward it on as desired by the consignee. Containerization has simply eliminated the need for labor at all stages of movement, not just shifted ILA work to another labor force. The motor carrier used to have to load the break-bulk cargo into the truck at the pier, and haul it to a freight terminal to redistribute it for shipment to various points. Since containerization both the ILA and motor carrier labor at the pier has been eliminated. The freight transportation industry has simply gone through a metamorphosis—a complete change in structure and nature. As the caterpillar turns into a butterfly, so has the break-bulk freight handling system turned into the container transportation system.

The ILA's argument that stripping and stuffing the container is like unloading the hold of a ship is only partially true. The container is like a chameleon. It performs different functions at different times, at different

geographic locations, and for different people. It may be that the container is part of the hold of the ship, while it is on the ship, and perhaps even for purposes of workmen's compensation after it is on the ground, as stated in the Supreme Court in *Northeast Marine Terminal Company, Inc. v. Caputo,* 432 U.S. 249, 270 (1977).[28] However, the container changes its nature when it becomes a part of the motor carrier's truck or a part of the railroad car. The ILA's rights with respect to containers change as the use of the container changes.

Containers cannot be viewed in isolation. They are a part of an entire sophisticated transportation system. The sea carriers, like the motor carriers and the railroads, are merely links of the entire container transportation system. From beginning to end the container transportation system is functionally integrated, but employers which interface with one another in the chain are separately owned and provide separate functions. Special equipment has been designed and purchased by sea carriers, motor carriers, and rail carriers. Warehouses and motor carrier freight stations have been built to accommodate the needs and desires of consignors and consignees. The new transportation system provides a flexibility never before possible under the old system. For example, some venders now use a port area warehouse as a distribution center, not just as a warehouse. The requirement that containers must be stripped at the pier unless warehoused for 30 days discourages venders from doing business with warehousemen

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28. In *Caputo* the Court was required to interpret the reach of the new amendment to the Longshoremen and Harbor Workers Compensation Act which extended coverage landward beyond the waterline. The Court said that Congress had, by the amendment, "moved the line" for purposes of coverage, but limited it to the "situs" of the pier and surrounding storage areas under the control of the sea carriers where maritime employees worked. This is precisely the line drawn by the Board herein in defining the work of longshoremen as traditionally having been performed at the situs of the seaport terminals.

who cannot quickly deliver to their customers.[29] Distribution services have never been done from the piers under the old break-bulk system, and cannot now be performed there.

Where, as here, the technological advances have so changed the nature of the work that it cannot be performed at the job site, without changing the nature of the technological advancement, the new work cannot be considered as part of the traditional bargaining unit work. Such was the holding of *Carrier Air Conditioning Co. v. NLRB*, 547 F.2d 1178, 1187 (2d Cir. 1976), where job site sheetmetal workers were held to have violated §8(e) and §8(b)(4) of the Act because they had "traditionally fabricated and installed the plenums on *conventional* air conditioning units," but not on "a new and different product." In a similar case a scrub sink, manufactured with parts similar to those worked on in the bargaining unit, was held to be a new and different product because the "installation of the special valves and piping in these sinks was not work traditionally and historically performed by on site plumbers, who were found to be not qualified or equipped to do this work. *Associated General Contractors of California, Inc. v. NLRB*, 514 F.2d 433, 438 (9th Cir. 1975). Here the work is new, not because the ILA members do not have the skill or capacity to do the work, but because ILA members are not qualified and equipped to do the work of stripping and stuffing containers off the pier where this new work is required to be performed by shippers, consignees and the nature of the container transportation system.

The record reflects that the Board considered the full nature of the containerization system in reaching its de-

29. Not only does the 30 day limit delay ultimate shipment, but when the ILA forced the stripping of all containers in the Port of Norfolk, prior to negotiating the 1975 Supplemental Agreement, it slowed the movement of cargo in containers from five to eight days. Jt. App. 205.

cision. The Courts of Appeals for the First, Second and Fourth Circuits agreed with the Board's analysis of the protectible work. The First Circuit held:

> The Board's definition of the work in question *as the stripping and stuffing of vans consigned to freight consolidators* is supported by substantial evidence and within its discretion. Once we accept this definition, we readily agree that the work in question was not traditionally done by the longshoremen. *International Longshoremen's Ass'n, Local 1575 v. NLRB*, 560 F.2d 439, 447 (1st Cir. 1977). (Emphasis added).

The Second Circuit agreed in *International Longshoremen's Ass'n v. NLRB*, 537 F.2d 706, 712 (2d Cir. 1976). When the Fourth Circuit examined an almost identical record to that below in *Associated*, it held:

> [T]he "stripping" of these full shippers loads by the truckers is not part of the *process of loading and unloading cargo of ships;* rather it is done to facilitate as part of the motor carriers task of transporting the goods from the pier to the consignee. Consequently (and not surprisingly), this work has traditionally been performed by employees of the motor carrier. It follows that such "stripping" does not fall within the bounds of the longshoremen's traditional role and that the challenged rules were unlawful "work acquisition" measures . . . *Humphrey v. International Longshoremen's Ass'n*, 548 F.2d 494, 499 (4th Cir. 1977). (Emphasis added).[30]

30. If the Court of Appeals was correct below in characterizing the definition of work as involving a legal standard, rather than a factual conclusion, then the Fourth Circuit's conclusion to the contrary carries just as much weight; and the significance of its conclusion is not diminished because it did not occur in the context of an unfair labor practice proceeding which would have required the Court to apply the substantial evidence test to the legal standard.

We submit that this is the only conclusion which makes any sense under the total circumstances.

The Court of Appeals for the District of Columbia Circuit did not say it disagreed with the Board's conclusion as to traditional ILA work, it merely held that the conclusion could not be reached without analysis by the Board within the framework the Court set forth. The Court even recognized the revolutionary impact of containerization on the land and sea transportation industries, and sensed that containerization created new work.

> When a technological innovation is introduced in the work place, *new work* may be created and may initially be performed, *as in these cases,* by employees other than those who worked with the old technology. The crucial question is how best to rationalize the work that results from the innovation into traditional work patterns. Bd. Petition 47a. (Emphasis added).

We believe the Court made a crucial reversible error in holding that the Act permits the Board or the Court to "rationalize the work" that results from the innovation into traditional work patterns. The proper test centers on whether the work protective agreement seeks to preserve the "traditional work" of the bargaining unit, not whether there is other similar work being performed by other employees which somehow the boycotting union can grab and claim to own. If this were the test the Teamsters Union would be able to claim all the trucking work. In *National Woodwork* the Supreme Court permitted the preservation "of work traditionally performed by the jobsite carpenters," and said that the conduct of the union was "related solely to preservation of traditional tasks of the jobsite carpenters." 386 U.S. at 646. In *Enterprise Association* the Court defined the work in controversy as "the piping work of units specified by any contractor or developer who prefers

and uses pre-piped units." 429 U.S. at 528, n.16. It was this element of customer preference which caused the First Circuit to say when it struck down the Rules that the definition of work had "narrowed significantly" the "range of work which can be protected." *ILA, Local 1575 v. NLRB,* 560 F.2d at 447.

Following the *Enterprise Association* decision, the Court of Appeals for the Fifth Circuit recognized that the proper definition of work depends upon defining with some precision the traditional work of longshoremen, including "whether it is the loading of particular ships wherever they dock in a particular area, or the unloading of all ships that dock at particular facilities." *Electro-Coal Transfer Corp.,* 591 F.2d at 290. Thus, the Court recognized, as contended herein, that the location of the work performed by the ILA is a relevant factor in determining traditional work permitted to be protected. The Board followed this exact reasoning in concluding that the work of stripping and stuffing containers off the pier, albeit identical to job duties performed on occasion on the pier, was not traditional ILA work.

The Board used the same reasoning in holding that the west coast longshoremen union's efforts to claim container work performed off the pier violated §8(b)(4)(ii)(B), *International Longshoremen and Warehousemen's Union,* 208 N.L.R.B. 994 (1974), *affirmed per curiam,* 515 F.2d 1017 (D.C. Cir. 1975), *cert. denied,* 424 U.S. 942 (1976) (*California Cartage*). The Board found that "preparing cargo for shipment in various types of containers is work that had been performed over the years by teamsters and other employees as well as longshoremen." 208 N.L.R.B. at 995.

Determining "traditional work" permitted to be preserved requires, as the record shows was done by the

Board, an evaluation of the precise work performed by the ILA and by the employees of consolidators, warehousemen and motor carriers before and after the introduction of containerization, the location where the work is required, the frequency with which it is performed, the actions of the parties reflecting their understandings as to whom the work belonged, and other circumstances. Rationalizing new work resulting from innovations into traditional work patterns in order to preserve the same number of jobs for employees is an inappropriate method of identifying work which may be protected. The question is what work belongs to the bargaining unit, not how many jobs that work can support. There is substantial evidence on the record to support the Board's decisions which were based on appropriate legal standards.

2. Further Evidence of the Unlawful Object of the Rules.

There is further evidence that the object of the Rules was to acquire work not traditionally performed by the ILA. There is clear evidence by the language of Rule 1(a) that the Rules are aimed at the labor relations of employers other than the sea carriers. Rule 1(a) requires that "containers owned, leased or used by carriers" be loaded or discharged by ILA labor. Jt. App. 255. It is a matter of common understanding that the leasing of a piece of property, real or personal, transfers the enjoyment of that property for all purposes other than ownership or limitations expressly placed on its use. No such limitations are placed on the use of the containers by the interchange agreements between motor carriers and sea carriers. Nevertheless, the sea carriers have been forced by the ILA to superimpose the conditions of the Rules on motor carriers and others not bound by any such agreement.

Moreover, for the ILA to insist that its members strip and stuff all containers within 50 miles of the seaports which are owned by someone other than a sea carrier and merely "used by carriers" to transport freight across the sea, demonstrates that the object of the Rules is directed toward the labor relations of container owners other than the sea carriers. For CONASA and the ILA to agree to apply the Rules to containers owned by a non-sea carrier, who wishes to use his own employees to do this work, and not pay double for the privilege of shipping his box of goods by sea carrier, clearly violates §§8(e) and 8(b)(4).

There is further evidence of the unlawful object of the Rules. Stripping and stuffing of containers requires essentially the same duties whether performed at the pier, in a warehouse 49 miles from the pier, in a motor truck terminal 51 miles from the pier, or at shippers', consignees', or consolidators' facilities wherever located. The container does not change its nature simply because it is stripped and stuffed by a consolidator, warehouseman, or motor carrier, rather than a shipper or ultimate consignee. Therefore, the nature of the employer doing the work has no bearing on the identification of ILA work.

The work of stripping and stuffing of containers has remained unchanged since the 1940's. The failure of the ILA to claim any portion of container work until 1959, in the Port of New York, and its failure to claim at least FSL loads in the Ports of Baltimore and Hampton Roads until 1968, demonstrates a recognition that the work did not traditionally belong to the ILA. From their inception the Rules have been repeatedly broadened so as to capture more and more of the container work for ILA members. The 50-mile radius is purely an arbitrary definition of geographic reach of the Rules. The

ILA does not even recognize this limit if it determines that a terminal facility has been set up by an employer beyond the 50-mile limit "for the purpose of evading the provisions of the Rules." Jt. App. 259. ILA representatives further believe that the Rules are violated any time a container is stripped at any location, even hundreds of miles from the port area, before it reaches its ultimate destination.

D. The Lack of Control of the Sea Carriers Over the Containers Demonstrates the Secondary Object of the Rules.

In *Enterprise Association* this Court held that regardless of whose work it was, the lack of power or control by an employer to accede to the work preservation demands of its employees was evidence of the true objective of the union to direct secondary pressure against this neutral employer in order to pressure another employer to give up the work sought by the union. 429 U.S. at 521. The Board had found that the union's pressure on a subcontractor, Hudik-Ross Co., Inc., not to install pre-piped climate control units constituted illegal secondary activity because Hudik's contract with its general contractor, Austin Company, Inc., specified the installation of pre-piped units, and therefore Hudik was incapable of assigning its employees the piping work; such work was never Hudik's to assign in the first place. In other words, Hudik had no power to accede to the union's demands.[31] The Board concluded that the union was exerting prohibited

31. The concept of "power" to assign work clearly contemplates the *legal* ability to accede to the union's demands. In an earlier case involving *Enterprise Association Local Union No. 638*, 183 N.L.R.B. 516 n.2 (1970), the Board stated in pertinent part that "[w]e agree with the Trial Examiner's conclusion that, at the time of the Respondent's August 1969 activities Courter was a neutral because 'there was no legal method by which Courter could comply with the Union's demands to fabricate the pipe'."

pressure on Hudik with an object of either forcing a change in Austin's manner of doing business or forcing Hudik to terminate its subcontract with Austin. Recognizing the validity of the Board's analysis, this Court emphasized that the gravamen of the unlawful conduct was that:

> The union sought to enforce its contract with Hudik by a jobsite product boycott by which the steamfitters asserted their rights to the cutting and threading work on the Norwegian Home project. It is uncontrovertible that *the work at this site could not be secured by pressure on Hudik alone and that the union's work objectives could not be obtained without exerting pressure on Austin as well.* 429 U.S. at 529-30. (Emphasis added).

The Court held that a union's attempt to pressure an employer, even an employer with whom it has a collective bargaining agreement, to assign work over which the employer has no "right of control" is "strong evidence" that the union's activities are "*intend[ed] to exert pressure on one or more other employers*" who do have power to control the work which the union seeks to obtain, and that the union's actions therefore have an illegal secondary objective. 429 U.S. 526 (Emphasis added). Such an event was part of the total circumstances pointing toward the proscribed objective. 429 U.S. 527 n.15, 526.[32] In this

32. The illegal secondary objective need not be the union's sole purpose. As long as the "tactical object" of the union's actions, 386 U.S. at 645, is to "exert pressure on one or more other employers," 429 U.S. at 526, the union's activity falls within the prohibition of §8(b)(4)(ii)(B). *See Electro-Coal Transfer Corp. v. General Longshore Workers, I.L.A., Local Nos. 1418 and 1419, et al.*, 591 F.2d 284, at 291 (5th Cir.), *rehearing and rehearing en banc denied*, 595 F.2d 1221 (1979).

In addition to the recognition of the Board's "right of control" test by the Court of Appeals for the Fourth Circuit in *George Koch Sons, Inc. v. NLRB*, 490 F.2d 323 (1973), and by

(Continued on following page)

case the vender or consignee ultimately specifies which employer moves the containers across the land and ships them. Bd. Petition 155a. Usually it is the consolidator, warehouser or motor carrier which is specified. Under *Enterprise Association* the sea carriers can not control this work, so the ILA's pressure on them is unlawful secondary activity.

Furthermore, the law deprives the sea carriers from exercising control over the containers as required by the Rules.

The sea carriers, as common carriers subject to government regulation and the provisions of their own tariffs and shippers' bills of lading, do not possess a legal right to (a) withhold containers or container services from customers on a selective basis, (b) condition access to containers upon compliance with the Rules and indemnification of the sea carriers for fines levied against them pursuant to the Rules, or (c) enforce the Rules or seek reimbursement for fines after the containers are released to motor carriers.

Footnote continued—

the Court of Appeals by the Ninth Circuit in *Associated General Contractors of California v. NLRB*, 514 F.2d 433 (1975), prior to the Court's decision in *Enterprise Association*, this test has been recognized and applied in light of the decision in *Enterprise Association* by the Court of Appeals for the First Circuit in *International Longshoremen's Association, Local 1575, supra*, n.3; by the Court of Appeals for the District of Columbia Circuit in *International Brotherhood of Electrical Workers, Local Union No. 501 v. NLRB*, 566 F.2d 348 (1977); by the Court of Appeals for the Ninth Circuit in *Chamber of Commerce of the United States, etc. v. NLRB*, 574 F.2d 457, *cert. denied*, 439 U.S. 981 (1978); and by the Court of Appeals for the Fifth Circuit in *Electro-Coal Transfer Corp., supra.*

1. Federal Maritime Law Strips the Sea Carriers of the Power to Condition the Use of Containers on Using ILA Labor.

The Court of Appeals stated that the sea carriers' "right of control" over containers is illustrated by their ability to refuse to release containers to motor carriers or consolidators who decline to indemnify the sea carriers for fines levied against them by the ILA under the Rules. However, the sea carriers cannot by law refuse because of the Rules to provide empty containers to consolidators or full containers to motor carriers. They are under an affirmative obligation imposed by law to provide services and facilities, including the use of containers which are an integral aspect of modern maritime transportation, to all persons on a nondiscriminatory basis.

Section 14 Fourth of the Shipping Act of 1916 (Shipping Act),[33] makes it unlawful for any "common carrier by water," whether engaged in interstate or foreign commerce[34] to "unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities . . . [or] (b) the loading and landing of freight in proper condition." Section 16 First of that Act[35] prohibits a common carrier by water from giving "any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever," or subjecting "any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." The 50-mile radius is totally arbitrary and its enforcement discriminates against sea carriers' customers.

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33. 46 U.S.C. §812.
34. 46 U.S.C. §801.
35. 46 U.S.C. §815.

This Court has repeatedly ruled that the Shipping Act prohibits a sea carrier from providing service upon special terms, *Swayne & Hoyt, Ltd. v. United States,* 300 U.S. 297 (1937) (contract rates for specified commodities unlawful), or upon terms which discriminate against persons who do not or cannot fully utilize the service, *California v. United States,* 320 U.S. 577, *rehearing denied,* 321 U.S. 802 (1944) (discrimination resulting from noncompensatory demurrage charges for wharf storage prohibited), or upon a retaliatory or discriminatory basis, *FMB v. Isbrandtsen Co.,* 356 U.S. 481 (1958). Similarly, the provision of containers by sea carriers for stuffing or stripping by their customers at inland facilities is a basic service of the container transportation system offered by sea carriers. The arbitrary denial of access to containers to motor carriers, freight forwarders, and particularly NVOCC's which also are sea carriers, subjects those persons and shippers using their services, and their "traffic," to an "undue or unreasonable prejudice or disadvantage" of the sort repeatedly condemned by this Court.[36]

Discriminatory shipping service was struck down in *Grace Line, Inc. v. FMB,* 280 F.2d 790 (2d Cir. 1960), *cert.*

36. This was the conclusion reached by Administrative Law Judge Charles E. Morgan in Federal Maritime Commission Nos. 73-17 and 74-40 (1975), *supra,* n.3, finding that "when an ocean carrier supplies equipment (containers) to one shipper but not to a second similar shipper, this action and the tariff rule providing for such action are unjustly discriminatory and unlawful" under §§14, 16, and 18(a) of the Shipping Act, 1916 and §4 of the Shipping Act, 1933. ALJD at 35, 49-50. Most recently, this Court held in *FMC v. Pacific Maritime Ass'n,* 435 U.S. 40 (1978), that a collective bargaining agreement to which two or more common carriers by water are party may be found to violate the Shipping Act if it impacts upon competition among carriers by indiscriminately imposing "employment terms and conditions on employers outside the bargaining unit." 435 U.S. at 62. *See also Volkswagenwerk v. FMC,* 390 U.S. 261 (1968), where the Court held unenforceable a discriminatory system for raising money from sea carriers to pay royalties to the International Longshoremen's and Warehousemen's Fund for the institution of labor-saving devices.

denied, 364 U.S. 933 (1961), wherein the Court of Appeals affirmed an order of the Federal Maritime Board requiring a sea carrier to give all shippers of bananas equal access to its vessels and to cease discriminating against them as to "cargo space accommodations". The court held that the provisions of the Shipping Act prohibiting discrimination by sea carriers in the provision of services were to be construed in the broadest terms:

> [We] think that §§812 and 815 should not be construed to give any "common carrier" the right to "unjustly discriminate against any shipper in the matter of (a) cargo space" (§812), or to "give any undue or unreasonable preference or advantage to any particular person" (§815). The Grace Line's argument presupposes, not only that these duties are limited to "common carriers by water," as of course they are, but also that they are limited to such carriers while they are carrying goods as to which they have "held themselves out as 'common carriers.'" We can see no reason to impute such a limitation upon the definition of "common carrier" in §801. 280 F.2d at 792.[37]

In *Flota Mercante Grancolombiana, S.A. v. FMC,* 302 F. 2d 887 (D.C. Cir. 1962), the Court of Appeals also held that the selective provision of cargo space for the carriage of bananas on an exclusive contract basis violated §§14

37. In *Nat. Ass'n of Regulatory Utility Com'rs v. FCC,* 525 F.2d 630 (D.C. Cir.), *cert. denied,* 425 U.S. 992 (1976), the Court of Appeals for the District of Columbia Circuit also offered an expansive definition of a common carrier and its duties to the public:

> What appears to be essential to the quasi-public character implicit in the common carrier concept is that the carrier "undertakes to carry for all people indifferently . . . ."
>
> * * *
>
> . . . But a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal. 525 F.2d at 641

and 16 of the Shipping Act. In subsequent proceedings, this Court held that the Federal Maritime Commission had properly concluded that a banana shipper was entitled to reparations from the sea carrier, Flota, because of the carrier's illegal denial of service to the shipper.

> The Maritime Board determined, and the Court of Appeals agreed, that Flota had been guilty of "unfairly" or "unjustly" discriminating against Consolo and of giving an "undue unreasonable preference" to Panama Ecuador in violation of §14 Fourth and §16 First of the Shipping Act. *Consolo v. FMC,* 383 U.S. 607, 622-23 (1966).

As with service, the sea carriers may not lawfully discriminate with respect to the use of container equipment. A container clearly constitutes "cargo space accommodations" and a basic "facility" of transportation aboard a containership. *DuPont de Nemours Int'l, S.A. v. S.S. Mormacvega,* 493 F.2d 97 (2d Cir. 1974). The ILA argues that the container is part of the hold of the ship even on the ground. Obviously it is not part of the hold. It is merely an object transported by the ship in its hold or on its deck. In any case, the sea carriers' denial of access to containers to motor carriers and consolidators is equivalent to the denial of cargo space and shipping opportunities which were condemned in *Grace Line, Inc.* and *Flota Mercante, supra.*

Moreover, it should be recognized that NVOCC's, like Dolphin, are shippers and consignees, and not just agents of shippers.[38] Accordingly, insofar as the Rules define "qualified shipper" to exclude a NVOCC which

38. In Federal Maritime Commission Nos. 73-17 and 74-40 (1975), *supra,* n.3, Administrative Law Judge Morgan noted that a consolidator or NVOCC who consolidates with other exporters' or importers' cargo to make a containerload is a *shipper* or

(Continued on following page)

consolidates goods and ships them under its own bill of lading, the enforcement of the 50-mile provisions of the Rules conflicts with the regulations promulgated pursuant to the Shipping Act and with the Rules themselves. Jt. App. 255.

The Shipping Act forbids sea carriers to condition the use of containers by motor carriers, warehousemen, and consolidators upon compliance with the Rules or to impose different cargo handling requirements (such that certain containers be stuffed or stripped by ILA deepsea labor) upon some shippers and their agents which are not imposed upon all shippers and their agents alike.[39] Lacking the legal right to withhold containers and container services on a selective basis, the sea carriers therefore lack any "right of control" over the use of containers, including the stuffing and stripping of containers inland,

Footnote continued—

consignee in relation to a sea carrier and must be treated as other shippers and consignees are treated by sea carriers. ALJD at 29. *See also* Hickey, *Intermodal Transportation,* 45 TUL. L. REV. 863, at 876 (1971) (a nonvessel operating common carrier by water "is a common carrier (as at common law) only in relation to its shippers. In relation to the ocean carriers with whom it ships under its own name the NVO is a shipper").

A NVOCC is defined by applicable regulations as a person who provides transportation for hire by water in interstate or foreign commerce, assumes responsibility or has responsibility imposed by law for the goods which he ships, and *"arranges in his own name* with underlying water carriers for the performance of such transportation whether or not owning or controlling the means by which such transportation is effected." 46 C.F.R. §510.21(d) (emphasis added). Thus, a NVOCC acts as a shipper rather than as a freight forwarder when exporting cargo under its own through export bill of lading. 46 C.F.R. §510.22(c).

39. Thus, in Federal Maritime Commission Nos. 73-17 and 74-40, *supra,* n.3, Administrative Law Judge Morgan warned that the provisions of Rule 1(a)(1) of the Rules on Containers which provides that any container "used" by a sea carrier which contains a consolidated containerload originating from or destined for any point within a 50-mile radius of the port shall be stuffed or stripped by ILA deepsea labor, subject to exceptions provided in the Rules, violates §14 of the Shipping Act. ALJD at 36-37.

by shippers, consignees, or their agents. Ownership of the containers by the sea carriers, and the rights of control flowing therefrom, is subordinate to the legal requirement to lease the containers on a nondiscriminatory basis.

2. The Equipment Interchange and Uniform Intermodal Interchange Agreements Prevent the Sea Carriers From Giving the Work to ILA Members.

The imposition of the Rules upon lessees of containers owned by sea carriers violates the equipment interchange agreement itself, which provides that a motor carrier lessee shall have "complete control and supervision of such containers" and "shall control the detail of the work of any employee or agent operating or using said containers." The Rules also violate the Uniform Intermodal Interchange Agreement in effect between certain sea carriers and motor carriers, which provides that the container user "shall have the right of complete control and supervision of equipment while in its possession."

3. Tariffs and Shipping Documents Give Shippers, Consignees, and Their Agents Exclusive Control Over Stuffing and Stripping Containers.

Sea carriers file tariffs with the Federal Maritime Commission[40] providing for the transportation of containerized cargo intact for delivery to a consignee or his agent. Thus, a containerload of cargo, whether shipped directly by a shipper having a beneficial interest in the cargo or by a NVOCC or other consolidator as shipper of a consolidated containerload, may, depending on certain circumstances including the type of bill of lading used, represent a single "package" or cargo for purposes of delivery to a consignee

40. *See* 46 C.F.R. Pt. 536.

or his agent pursuant to a bill of lading, and for purposes of the sea carrier's liability for loss or damage to the containerload of cargo. The courts have increasingly recognized the fact that a container stuffed and sealed by the shipper or his agent and shipped as a containerload of cargo may constitute a single "package" of cargo for purposes of the sea carrier's limitation of liability. *Rosenbruch v. American Export Isbrandtsen Lines, Inc.*, 543 F.2d 967 (2d Cir.), *cert. denied*, 429 U.S. 939 (1976); *Royal Typewriter Co., Div. Litton Bus. Sys., Inc. v. M/V Kulmerland*, 483 F.2d 645 (2d Cir. 1973); *Complaint of Norfolk, Baltimore & Carolina Line, Inc.*, 478 F. Supp. 383 (E.D. Va. 1979); *Lucchese v. Malabe Shipping Co., Inc.*, 351 F. Supp. 588 (D. P.R. 1972); *United Purveyors, Inc. v. Motor Vessel New Yorker*, 250 F. Supp. 102 (S.D. Fla. 1965). When viewed as a single package, a container clearly cannot be broken open for ILA stuffing and stripping.

Regardless of whether the container is viewed as a single package or merely a container of packages, a sea carrier has no authority to break the seal on a container and to restuff its contents into another container using ILA deepsea labor, when that container is shipped intact under a bill of lading providing for the transportation of that designated container in accordance with a tariff filed by the sea carrier with the Federal Maritime Commission.[41] Containers are frequently shipped by NVOCC's and other shippers via through bills of lading, which cover the movement on the land and sea legs of the journey.

41. For example, the tariff filed on behalf of sea carriers with the Federal Maritime Commission by the North Atlantic French Atlantic Freight Conference, effective as amended during the period January 1971 to June 1973, Tariff No. (2) FMC-3, provided for commodity rates graduated into three separate levels

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See, Trailer Marine Transport Corp. v. FMC, 602 F.2d 379 (D.C. Cir. 1979), wherein the Court of Appeals held that such through bills of lading issued on rail-sea-rail transportation were covered by the Interstate Commerce Act, rather than the Intercoastal Shipping Acts. Through selection of an appropriate tariff, a shipper or his consignee retains the right of control over the good shipped in a container by reserving the right, through the bill of lading, to designate an agent who may stuff or strip the container. Thus, while a sea carrier may have physical possession of a container, it does not possess the legal power to authorize unnecessary handling of the cargo sealed in that container.

4. Motor Carriers and NVOCC's Have Absolute Right of Control of Containers in Their Possession.

Whether or not the sea carrier can control containers at the seaports they clearly have no power to control the

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Footnote continued—

of service: container stuffing by a shipper and through shipment of the container for stripping by the consignee or his agent off-pier; container stuffing by a shipper for delivery of the contents to the consignee; and a third level of service for break-bulk, palletized, and/or unitized shipments (Rule 4, Rates). The tariff also permitted a shipper to place a lock on any container provided that the shipper accept responsibility for sending the proper key to the consignee (Rule 13 I), and provided for a special cargo rate for a shipper's exclusive use of a container (Rule 13 L). The tariff precluded the sea carrier's responsibility for any damage resulting from improper stuffing or mixing of cargo, or for any discrepancy in count or concealed damage to the cargo, in a container loaded by a shipper (Rule 13 M). The tariff also provided for tranportation of consolidated containerloads, required that each such container must be stripped by the freight forwarder, consolidator, or his agent away from the premises of the sea carrier, and provided that the consolidator had full responsibility for movement of the container and its contents between the sea carrier's terminal and the facility of the consolidator (Rule 13 T). However, the freight forwarder or consolidator could *elect* to have the container stuffed at the sea carrier's terminal, using services of the sea carrier's stevedores, for an additional charge (Rule 13 T).

stuffing and stripping of containers after they have been delivered to a motor carrier. This principle is supported in the maritime liability case of *Palmer v. Agwilines, Inc.,* 135 F.2d 689 (2d Cir. 1943) wherein the court held:

> In the case at bar the barge and its contents had come within the actual control of the respondent [connecting common carrier by water] at its terminal. It was as much a means of delivery as a railroad car would have been and might as well be used by respondent for the cargo as one of its own lighters. 135 F.2d at 691.

Accord, Mackey v. United States, 197 F.2d 241 (2d Cir. 1952); *Roah Hook Brick Co. v. Erie R. Co.,* 179 F.2d 601 (2d Cir. 1950). This principle of liability also governs the right of control of cargo by common carriers by water subject to the Harter Act[42] and the Carriage of Goods by Sea Act.[43] *Madow Co. v. S.S. Liberty Exporter,* 569 F.2d 1183, 1185 (2d Cir. 1978). NVOCC's are common carriers by water.

Similar legal principles apply to motor carriers. The Interstate Commerce Act requires that all common motor carriers shall issue a receipt or bill of lading for property they receive for transportation, and holds the carrier liable for the freight in its possession with or without a bill of lading.[44] The possession of the container and the bill of lading give the motor carrier the absolute right to strip the container at any point during its movement.[45] The sea carriers have no legal power to turn over a container to

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42. 46 U.S.C. §§190 *et seq.*

43. 46 U.S.C. §§1300 *et seq.*

44. 49 U.S.C. §11707. Recodification of the old law without substantive change. Pub. L. 95-463, §3, October 17, 1978, 92 Stat. 1466.

45. See n.2, *supra.*

a motor carrier and then enforce a condition subsequent that it will not strip the container within 50 miles of the seaport. At this point in the journey only the motor carriers have the right to control the work.

In summary, sea carriers are required by law to offer containers and container services, including container leases, to all customers on an equal basis, and cannot condition or control their use by some motor carriers, warehousemen and consolidators. Sea carriers are required to transport all containerized cargo indiscriminately pursuant to their tariffs, regardless of whom a shipper or consignee has designated to stuff or strip a container. Finally, sea carriers have no right to discriminate against their competitors for consolidation work, even by means of an attempt to "impose bargaining-unit terms on employees outside the unit," *FMC v. Pacific Maritime Ass'n,* 435 U.S. 40, 60 (1978); *see also Volkswagenwerk v. FMC,* 390 U.S. 261 (1968). Clearly, therefore, the sea carriers' lack of power to assign this work to the ILA is conclusive demonstration of the secondary objective proscribed by §8(b)(4)(ii)(B).

VIII. CONCLUSION

There was substantial evidence in the record to support the Board's conclusion that the Rules were negotiated in violation of §8(e) and enforced in violation of §8(b)(4)(ii)(B) of the National Labor Relations Act. The containerization freight transportation system requires new and different work to be performed at different locations than at the seaport terminals. Stripping and stuffing of containers within the functioning of this system has never been performed, except on a relatively few occasions when specified, by ILA labor at the seaport terminals. Furthermore, the sea carriers did not have the legal power to enforce the Rules against consolidators, motor

carriers, and warehousemen. Therefore, the sea carriers became neutral employers who were enmeshed by the ILA in its dispute with the off-pier employers who were doing work coveted by the ILA. The object of the Rules was clearly secondary. The decision of the Court of Appeals for the District of Columbia should be reversed, and the decision of the Board and its order enforced.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1979

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

TIDEWATER MOTOR TRUCK ASSOCIATION,
HOUFF TRANSFER, INC., and
DOLPHIN FORWARDING, INC.,
Respondents.

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

and

NEW YORK SHIPPING ASSOCIATION AND
COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS,
Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

BRIEF OF RESPONDENT DOLPHIN FORWARDING, INC.

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No. 79-1082

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

TIDEWATER MOTOR TRUCK ASSOCIATION,
HOUFF TRANSFER, INC., and
DOLPHIN FORWARDING, INC.,
Respondents,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

and

NEW YORK SHIPPING ASSOCIATION and
COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS,
Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

BRIEF OF RESPONDENT DOLPHIN FORWARDING, INC.

OPINIONS BELOW

The opinion of the Court of Appeals (Cert. App. A at 1a-83a)[1] is not yet officially reported. The decisions and orders of the National Labor Relations Board (Cert. App. D and E at 90a-109a, 110a-184a) are reported at 231 N.L.R.B. 351 and 236 N.L.R.B. No. 42.

JURISDICTION

The judgment of the Court of Appeals (Cert. App. B at 84a-86a) was entered on September 25, 1979. The Board's petition for rehearing with a suggestion for rehearing *en banc* was denied on December 13, 1979 with Judges Tamm, MacKinnon, Robb and Wilkey dissenting (Cert. App. C at 87a-88a).[2] The petition for writ of certiorari was filed on January 10, 1980, and was granted on January 21, 1980. The jurisdiction of this Court is invoked under 29 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board properly concluded that contractual provisions adopted by the union and the employer-organizations to deal with containerization in the shipping industry enlarged, rather than preserved, work opportunities for employees represented by the union, and that such provisions therefore violated Section 8(e) of the National Labor Relations Act and that union action to enforce them violated Section 8(b)(4)(B) of the Act.

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[1] "Cert. App. A through E" citations are to the appendices in the petition for writ of certiorari of the National Labor Relations Board.

[2] By motion subsequent to the judgment of the Court of Appeals, Dolphin Forwarding, Inc. was granted leave to intervene and file a petition for rehearing which was also denied on December 13, 1979.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act (29 U.S.C. § 151 *et seq.*) are as follows:

1. Section 8(b), 29 U.S.C. § 158(b), provides, in pertinent part:

> It shall be an unfair labor practice for a labor organization or its agents
>
> (4)(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where * * * an object thereof is:
>
> * * * * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * * Provided, that nothing contained in this clause (B) shall be construed to make unlawful * * * any primary strike, or primary picketing; * * *

2. Section 8(e), 29 U.S.C. § 158(e), provides, in pertinent part:

> It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void * * *

ARGUMENT

THE COURT OF APPEALS FAILED TO GIVE PROPER CONSIDERATION TO THE "SURROUNDING CIRCUMSTANCES" AS MANDATED IN NATIONAL WOODWORK AND PIPEFITTERS

Respondent Dolphin Forwarding, Inc. ("Dolphin") consolidates small packages and shipments of goods for ocean transport between the northeastern United States and Puerto Rico. Goods are collected at warehouses utilized by Dolphin, located at off-pier sites within a fifty-mile radius of the Port, and are loaded into (or unloaded from) containers supplied to Dolphin by the ocean shipping carriers. Ever since Dolphin started in business, the work of loading and unloading these containers has been performed by non-International Longshoremen's Association ("ILA") labor (indeed, since the ILA's activities are limited to the pier, the ILA could not perform this work in any event).

Beginning in late 1974, pursuant to a 1969 Agreement extracted from them by the ILA (known as the Rules on Containers), the ocean carriers, through their bargaining agent New York Shipping Association ("NYSA"), have been threatening to put an end to Dolphin's business by refusing to supply or carry containers loaded or unloaded at Dolphin's off-pier facility. If the Court sanctions this takeover of an entire industry by the ILA and NYSA, Dolphin and companies like it will face economic extinction.

According to previous decisions of this Court, the ILA-NYSA agreement is lawful only if it was intended to "preserve" work traditionally performed by the ILA. The test for assessing the validity of a "work preservation" clause was enunciated by this Court in *National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. 612 (1967) and *Enterprise Ass'n of Steam, etc. Pipefitters* v. *NLRB*, 429

U.S. 507 (1977). In making such an analysis, *National Woodwork* requires consideration by the National Labor Relations Board ("Board"), in the exercise of its administrative discretion, of "all the surrounding circumstances"[3] relating to the work in question. Such factors as the economic "personality" and history of the industry, the threat of displacement of workers and the history of labor relations between the union and the employers being boycotted are to be considered in performing this analysis.[4]

In the instant case, the Court of Appeals recognized the controlling nature of the *National Woodwork* and *Pipefitters* precedents but, it is submitted, ignored the type of "surrounding circumstances" analysis that those cases expressly require. *International Longshoremen's Ass'n* v. *NLRB*, Nos. 77-1735, 77-1758, and 78-1510 (D.C. Cir. filed Sept. 25, 1979).[5]

The first order of business in analyzing a "work preservation" issue is to define the work in controversy "since that is the predicate upon which the issue of work preservation must turn." *International Longshoremen's Ass'n*, 221 N.L.R.B. 956, 959 (1975). In rendering its decisions, the Board concluded that the off-pier "stripping" (unloading) and "stuffing" (loading) of containers

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[3] *National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. 612, 644 (1967).

[4] *Id.* at 644 n.38.

[5] Two separate Board proceedings, *International Longshoremen's Ass'n. (Associated Transport, Inc.)*, 231 N.L.R.B. 351 (1977) and *International Longshoremen's Ass'n. and New York Shipping Ass'n, Inc. (Dolphin Forwarding, Inc.)*, 236 N.L.R.B. No. 42 (1978), were consolidated for argument and decision by the Court of Appeals. The *Dolphin Forwarding* case involves the Port of New York; the *Associated Transport* case involves the Ports of Baltimore, Maryland, and Hampton Roads, Virginia.

was the appropriate definition of the work in question.[6] The Court of Appeals rejected this definition and held that the Board had "committed reversible legal error by ignoring circumstances crucial to responsible application of the Supreme Court's work preservation doctrine enunciated in *National Woodwork* and *Pipefitters.*" (Cert. App. A at 50a-51a). The Court of Appeals offered no definition of its own but indicated that the "loading and unloading of ocean-borne cargo" was a definition that would have been acceptable to it (Cert. App. A at 51a).

A review of the development and spread of containerization clearly evidences the erroneous nature of the Court of Appeal's conclusion. This history indicates that the Court, and not the Board, "ignored circumstances" in rendering its decision.

The present-day concept of the consolidation of cargo into large wooden or metal boxes was originated in the early 1920's when the Illinois Central Railroad began offering a container service for the handling of small packages which were to be shipped by rail.[7] The use of such containers, many of which were not larger than eight-foot cubes, expanded in the 1930's and 1940's to the extent that numerous railroad companies were utilizing containers for rail service.

In 1932, the Department of Labor conducted an in-depth study of the problems of ocean cargo handling and strongly suggested that a solution to the low productivity levels being experienced in such handling would be the

[6] *See* Cert. App. D at 95a; Cert. App. E at 116a. *See also International Longshoremen's Ass'n*, 221 N.L.R.B. 956 (1975); *International Longshoremen's Ass'n*, 245 N.L.R.B. 172 (1979).

[7] *See* 1967 First Annual Pacific Institute of Transportation No. 1—The Containerization Explosion at 87. *See also* O. BARTHOLOMEW, MECHANICAL LOADING OF CARGO VESSELS 10 (1942).

utilization of large uniform-sized containers for ocean shipment.[8]

The concept of a fully containerized ocean going vessel was first developed in the early 1940's when Mr. L. D. Smith applied for patent rights on a ship's hold allowing for the rapid loading and discharge of containers.[9] Mr. Smith concluded that such a method of cargo-handling would greatly reduce pilferage and damage rates[10] while substantially improving productivity on the piers.

Throughout the course of World War II, the use of so-called "Conex" boxes by the military became widespread. They were owned by the United States and were loaded by government employees with household goods, electronic equipment, *etc.* These boxes were never stripped or stuffed by ILA labor.[11]

Prior to World War II, personal property was shipped to the United States in large wooden boxes which were roughly the size of a household moving van (Jt. App. 602-603).[12] These boxes were not stripped or stuffed by ILA labor (Jt. App. 603). Subsequent to World War II, immigrants from Puerto Rico utilized the same type of container for transport of personal property without having to

[8] U.S. BUREAU of LABOR STATISTICS, DEP'T of LABOR, BULL. NO. 550, CARGO HANDLING AND LONGSHORE LABOR CONDITIONS 16 (1932).

[9] *See* C. SAUERBIER, MARINE CARGO OPERATIONS 54 (1944) ("SAUERBIER").

[10] *Id.* The reduction in pilferage and damage has uniformly been cited as a significant advantage of off-pier consolidation. *See, e.g., Agreement No. 10294*, Dec. Fed. Mar. Comm'n No. 77-23 at 48 (Dec. 13, 1979).

[11] *See Humphrey* v. *International Longshoremen's Ass'n.*, 548 F.2d 494, 498 n.16 (4th Cir. 1977).

[12] "Jt. App." citations are to the Joint Appendix filed in this case. The size of containers presently utilized by consolidators and ocean carriers is typically 40 feet in length by 8 feet in height or roughly the size of a household moving van.

undergo any on-pier stripping or stuffing by ILA labor (Jt. App. 603).

In 1949, Valencia-Baxt Express, Inc., one of the first off-pier consolidators, was organized and commenced offering regular container shipping services.[13] At first, Valencia-Baxt utilized eight (8) foot containers[14] which were loaded by its non-ILA employees at an off-pier site. In 1955, Valencia-Baxt began using twenty (20) foot containers,[15] some of which are still in use today. Valencia-Baxt and its successor, Consolidated Express, Inc.,[16] did not experience on-pier stripping and stuffing of their containers by the ILA, with few exceptions, until February of 1973.[17]

The Sea-Land Company pioneered the total containership concept commencing in 1956 when it began offering service between the ports of New York and Houston.[18]

[13] *See Balicer* v. *International Longshoremen's Ass'n.*, 364 F. Supp. 205, 220-221 (D.N.J. 1973).

[14] *Id.* at 221.

[15] *Id.*

[16] 364 F. Supp. at 208 n.2. Consolidated Express, Inc. filed unfair labor practice charges against the ILA and the NYSA shortly after its containers were first stripped and stuffed in the spring of 1973. *See International Longshoremen's Ass'n*, 221 N.L.R.B. 956 (1975) ("Conex I"). The Board found that the appropriate work in controversy was the off-pier loading of containers, an activity to which the Board found the ILA had no legitimate claim and which constituted "make-work" or featherbedding for the ILA. *Id.* at 960. The cease-and-desist order of the Board entered by the Board in *Conex I* was enforced by the United States Circuit Court of Appeals for the Second Circuit. *See International Longshoremen's Ass'n* v. *NLRB*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977). In *Dolphin*, the Board held that the *Conex I* precedent was controlling and entered a cease-and-desist order which was denied enforcement by the Court of Appeals below.

[17] *Id.* at 221. *See also* Jt. App. 632.

[18] *See Hearings Before the Subcomm. on Merchant Marine of the House Comm. on Merchant Marine and Fisheries*, 90th Cong., 1st Sess. 127 (1967) ("*Marine Hearings*").

At the same time the United States was in the process of selling two war-built tankers to a Great Lakes shipping line which were to be converted into containerships for use in trade from New York to Mexico and Cuba.[19] It was reported in 1956 that A.H. Bull and Co. was moving between five and six hundred containers per year[20] in the New York-Caribbean trade.

In recognition of the enormous potential for containerization and the expanded use of containerships, in 1956 the Port of New York Authority acquired a 300-acre tract of meadowland along Newark Bay in Elizabeth, New Jersey and initiated construction on an entirely new marine terminal designed to accomodate the containerships.[21]

In 1959, the ILA, which had been certified as the exclusive bargaining agent for longshoremen in the Port of New York in 1956,[22] at first signed a collective bargaining agreement with the NYSA which permitted the free and unfettered use of containers.[23] This provision remained intact until the longshore negotiations of 1968. During that entire period, containerization played vir-

[19] *See Hearings on S.J. Res. 177 Before the Subcomm. of the Senate Comm. on Interstate and Foreign Comm.*, 84th Cong., 2d Sess. (July 3, 1956).

[20] SAUERBIER at 411.

[21] PORT OF NEW YORK AUTHORITY, CONTAINER SHIPPING: FULL SPEED AHEAD (May, 1967).

[22] *See Matter of New York Shipping Ass'n*, 116 N.L.R.B. 1183 (1956).

[23] Ross, *Waterfront Labor Response to Technological Change: A Tale of Two Unions*, 21 Lab. L.J. 397, 401 (1970).

tually no role in the periodic negotiations between the ILA and NYSA[24] while it experienced substantial widespread diffusion throughout the shipping industry.

In 1964, Dolphin commenced offering consolidation services for container shipments between the Port of New York and Puerto Rico and did not have its containers interfered with by ILA labor until December of 1974 (Jt. App. 586-587). Dolphin principally utilized the Seatrain shipping line as its primary carrier (Jt. App. 477, 493), although Sea-Land possessed a greater container capacity. By 1967, Sea-Land operated 25 containerships, many of which were capable of carrying the larger 20-foot containers,[25] with four vessels in shipyards for delivery the following year.[26] More particularly, Sea-Land owned or leased over 31,000 containers in 1967.[27]

It was not until twenty years after the first consolidator commenced offering container services that the ILA laid claim to the exclusive stripping and stuffing of containers.[28] This change of position in the 1968-1969 negotiations followed nearly ten years of adherence to the plain meaning of the 1959 Agreement which allowed for the free and unrestricted use of containers, *i.e.*, no on-pier stripping and stuffing by ILA labor.[29] A strike ensued,

[24] In 1964, after a lengthy strike, NYSA set up a guaranteed annual income ("G.A.I.") plan for longshoremen. Containerization was not at issue. The GAI plan gave longshoremen a guarantee of a minimum of 1600 work hours per year at longshore rates. This level was increased to 2080 in 1969. *See Agreement 10294*, Dec. Fed. Mar. Comm'n No. 77-23 at 60 (Dec. 13, 1979).

[25] *See Marine Hearings* at 127. *See also International Longshoremen's Ass'n* v. *NLRB*, 537 F.2d at 709 (2d Cir. 1976).

[26] *See Marine Hearings* at 127.

[27] *Id.* at 128. During the early 1960's, Sea-Land did not experience any stripping or stuffing of its containers by ILA labor (Jt. App. 632).

[28] *See International Longshoremen's Ass'n*, 221 N.L.R.B. at 957.

[29] *Id.* at 960.

following an inability to reach agreement between the ILA and the NYSA,[30] and a collective bargaining agreement was finally concluded.[31] The agreement, known as the Rules on Containers, provided that ILA labor would strip and stuff all containers which originated from within a fifty (50) mile radius of an ILA-port when loaded with less-than-container-load cargo ("LCL").[32] In the event a container was not so stripped and stuffed, the ocean carriers were required to pay a fee of $250 per container into a joint ILA-NYSA Container Royalty Fund which was used to supplement the G.A.I. payments.[33]

Despite its partial "success" in negotiating the Rules on Containers, the ILA did not choose, with a few exceptions, to strip or stuff containers consolidated at off-pier sites within a fifty mile radius of the Port of New York until four years after the execution of the Rules.[34] During that period, off-pier consolidators in the Port of New York were assured by the ocean carriers that their containers would not be "impeded" by ILA labor.[35]

In January 1973, again faced with the threat of a coast-wide strike by the ILA, the NYSA and the Council of North Atlantic Shipping Associations ("CONASA")

[30] *Id.* at 957-958.

[31] *Id.* at 958.

[32] This fifty mile limit was a substantial narrowing of the ILA's original claim to strip and stuff containers on-pier regardless of origin or type of cargo. Since a significant amount of consolidation of LCL cargo was done within such a radius, the Rules on Containers still presented a real danger to the continued existence of consolidators such as Dolphin.

[33] This fee was increased to $1,000 per container during the 1971 negotiations (Cert. App. A at 11a).

[34] *See, e.g., Balicer* v. *International Longshoremen's Ass'n.*, 364 F. Supp. at 217; *International Longshoremen's Ass'n*, 221 N.L.R.B. at 960.

[35] *See Balicer* v. *International Longshoremen's Ass'n*, 364 F. Supp. at 219.

reluctantly agreed to a supplement of the Rules of Containers, known as the Dublin Supplement, which required strict enforcement of the Rules.[36] The Dublin Supplement precluded the ocean carriers from providing containers to any off-pier consolidator, such as Dolphin, which was operating within the fifty-mile radius of the Port of New York.[37] Moreover, the Supplement contained a "runaway shop" clause which provided for extensions of the fifty-mile radius if a consolidator sought to "evade" the Rules on Containers by utilizing facilities beyond the fifty-mile radius (Cert. App. A at 66a).

Thus, it was not until February of 1973 that the ILA began a regular practice of stripping and stuffing containers[38] consolidated at off-pier sites, but no effort was made to enforce the Rules against Dolphin until December of 1974 (Jt. App. 586-587).

In light of the foregoing, any contention that the stripping or stuffing of containers is "traditional longshore work" simply cannnot withstand scrutiny. The economic history and "personality" of containerization clearly indicates that off-pier consolidators have been in continuous business since at least 1949 and that containers consolidated by these companies were not systematically stripped and stuffed by ILA labor until the Spring of 1973. A labor agreement which asserts an exclusive right to

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[36] *See International Longshoremen's Ass'n* v. *NLRB*, 537 F.2d at 710.

[37] *Id.*

[38] *See Balicer* v. *International Longshoremen's Ass'n.*, 86 L.R.R.M. 2559, 2563 (D.N.J. filed April 19, 1974); *International Longshoremen's Ass'n*, 221 N.L.R.B. at 960. A significant impact of the Dublin Supplement was a tremendous increase in pilferage and damage claims, both in number and dollar size, which was attributed to the increased handling of consolidated cargo by ILA labor. *See, e.g., Balicer* v. *International Longshoremen's Ass'n*, 86 L.R.R.M. at 2562.

perform work which has been historically and continuously performed by parties other than those to the agreement cannot pass muster under the test of "all the surrounding circumstances" test of *National Woodwork* and *Pipefitters*. A "work preservation" clause, such as the Rules on Containers, negotiated substantially after the advent and proliferation of containerization, should not be permitted to destroy the business of consolidators such as Dolphin.

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the District of Columbia Circuit should be reversed and remanded for enforcement of the Board's order in the cases herein.

Respectfully submitted,

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FOR ARGUMENT

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No. 79-1082

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS NEW YORK SHIPPING ASSOCIATION, INC. AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS

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International Longshoremen's and Warehousemen's Union, Local 13 (*California Cartage Co.*), 208 N.L.R.B. 994 (1974), *enf'd mem. sub nom. Pacific Maritime Ass'n* v. *NLRB*, 515 F.2d 1018 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 942 (1976) 41

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New York Shipping Ass'n, Inc. v. *International Longshoremen's Ass'n, Local 791*, 41 Lab. Arb. 809 (Turkus, Arb.), *enf'd*, 54 L.R.R.M. 2680 (Sup. Ct. N.Y. Co. 1963) 37

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93 Cong. Rec. A 2377 (1947) (remarks of Sen. Ball), *reprinted in* I NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 at 1623 (1948) 34

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S. Rep. No. 105, 80th Cong., 1st Sess. 22 (1947), *reprinted in* I NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 at 428 (1948) 34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS NEW YORK SHIPPING ASSOCIATION, INC. AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS

Introduction

This brief is submitted by respondents New York Shipping Association, Inc. ("NYSA") and Council of North Atlantic Shipping Associations ("CONASA"), pursuant to Rules 40(3) and 41(2) of the Rules of this Court, in support of the decision of the Court of Appeals in this case, and in response to the briefs filed by petitioner National Labor Relations Board ("Board" or "NLRB") and by the respondents and *amici curiae* endorsing its position.[1]

[1] References in this brief designated "Pet. App." are to the pages of the appendix to the Board's petition for certiorari; references designated "A." are to the pages of the separately bound appendix; and, references designated "PB" are to the pages of the Board's brief. Other briefs are designated by the abbreviated names or acronyms of the parties sponsoring their submission.

Question Presented

National labor policy embodied in the doctrine of work preservation sanctions collectively bargained provisions preserving the traditional work of unit employees from technological displacement. In the longshore industry, as well as in many other industries, technological innovation has dislocated unit work. It has enabled workers at other work sites to perform work functionally equivalent to the traditional work practices of the unit employees protected by the contractual work preservation clause.

The fundamental threshold question in every work preservation case relates to the definition of the work in controversy—**whose work is it?** If it is identical or functionally equivalent to traditional unit work practices, and thus fairly claimable by the protected unit employees, it may lawfully be preserved or recaptured; if it is entirely new and unrelated work, it may not be acquired.

The basic but exceptionally important question in this case is:

> Whether the Board may ignore the protected unit's traditional work practices, performed prior to the emergence of the technological innovation, by defining the work in controversy as that performed away from the protected unit's work situs because of the innovation, thus automatically precluding any opportunity for the unit employees to preserve their work?

Counterstatement of the Case

Introduction

The undisputed facts in this case have been thoroughly and accurately portrayed in the opinion of the Court of Appeals. However, the briefs filed by the Board and its supporters contain extraneous materials that are not part of the record in this case. Consequently, this counterstatement is necessary to state with accuracy the facts of

record, without resort to extraneous articles, journals, reports and other writings never relied on in the Board decisions below.

The Labor Controversy

This case arises from the turbulent history of a labor struggle that has raged in the shipping industry without interruption for the past 25 years. It is a classic chronicle of a labor union's primary efforts to exact from its members' employers contractual protection for the job security of its members, who were faced with a drastic loss of work opportunities because of technological job displacement. (Pet. App. 14a-18a). Indeed, the Board readily admits that "the controversy in this case focuses on the response of the longshoremen's union and the shipping industry to containerization." (PB 3).

In the shipping industry, the union, International Longshoremen's Association, AFL-CIO ("ILA"), has resisted the encroachments of advancing technology which has decimated the number of its members and diminished their work opportunities. The focus of contention has been the industry's increasingly prevalent use of large metal cargo containers to increase the efficiency of shipping operations by decreasing the need for the traditional piece-by-piece loading and unloading of ocean borne cargo by ILA represented longshoremen. (Pet. App. 4a).

Traditional Longshore Work

The "work in controversy" in this case is the handling of cargo on piers and waterfront terminals in connection with its ocean transport.[2] Historically, the work of long-

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[2] This is explicitly set forth in the collectively bargained Rules on Containers at issue in this case:

> The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts which was performed at deepsea waterfront facilities. These rules do not have any effect on work which historically was not performed at a waterfront facility by deepsea ILA labor.

Pet. App. 67a-68a; A. 278.

shoremen has not been limited to loading and unloading ships. As this Court determined in *Northeast Marine Terminal Co.* v. *Caputo,* 432 U.S. 249 (1977) and in *P. C. Pfeiffer Co.* v. *Ford,* 48 U.S.L.W. 4018 (Nov. 27, 1979) (No. 78-425), and as the Board concedes in this case (PB 4, 7-8, 8 n.4, 14 n.13; *see also* TMTA Brief 9-10), longshoremen working on the docks in the ports of New York, Baltimore and Hampton Roads (as well as in all other ports on the Atlantic and Gulf Coasts) physically handled the movement of all ocean borne cargo piece-by-piece from the hold of the steamship vessel to the tailgate of the pickup or delivery truck. (Pet. App. 139a-140a; A. 109-117, 134-135, 150, 209-211, 600-602). This pattern of work encompassed not only the physical stowage and discharge of the cargo into and out of the vessel's hold, but also all of the interrelated functions involved in facilitating and preparing it for ocean transport, including receipt of cargo from land transportation, sorting and piling cargo onto pallets for stowage, removing the discharged cargo from pallets and storing the loose cargo on the waterfront terminal for transfer to land transportation and ultimate delivery to the consignees. (Pet. App. 4a, 48a-52a, 120a-121a, 139a-140a). *See also, Intercontinental Container Transport Corp.* v. *New York Shipping Ass'n,* 426 F.2d 884, 886, 889 (2d Cir. 1970) (hereinafter "*ICTC*").[3]

Containerization radically changed this traditional method of cargo handling. Now hundreds of crates, packages and cartons, weighing more than 30,000 pounds, can be loaded on or unloaded from an ocean vessel without a

[3] The manpower requirements on a waterfront terminal are substantial. A permanent work force of many hundreds of longshore employees is required to staff a single waterfront facility, including such longshore crafts as longshoremen, dock bosses, equipment foremen, gearmen, maintenance men, checkers, cargo repairmen ("coopers"), carpenters, etc. (A. 109). In comparison, only a handful of workers are hired, frequently on a casual, day-to-day shape-up basis, at inland trucking, warehouse or consolidation facilities. (A. 23, 34-35).

single package being handled by the longshoremen. The result was a devastating loss of longshore work opportunities and manhours of employment, and a dramatic increase in dockside work productivity. (Pet. App. 4a-5a, 121a; A. 150, 210-212, 214, 464, 603, 627-628).[4] In the Port of New York alone, annual employment has declined from a pre-containerization level of 43 million hours in 1958 to less than 20 million manhours in 1977, even though the annual volume of cargo handled in the port almost doubled. (A. 464, 603, 627-628).

The Container Revolution

After World War II, small 8′ x 8′ x 8′ wooden receptacles, which the military had utilized during the war, were acquired by commercial steamship carriers to ship pilferable, fragile or hazardous cargoes. (A. 150, 602). These reusable boxes, which were transported on the decks of conventional breakbulk vessels, were loaded and unloaded by longshoremen at the piers, with the exception of boxes containing United States mail and household effects (exceptions which have continued to this day). (A. 602). In the 1950's, steamship carriers initiated the practice of deploying some of these boxes to manufacturers and other volume shippers who filled them at their own facilities with large single cargo lots. The wooden boxes were gradually replaced during the 1950's by metal containers of increasing size to accommodate more cargo.

The Container Age had its advent in the late 1950's in the New York to Puerto Rico trade when a tanker was converted into a cellular vessel to carry containers exclusively. (A. 117). The Port of New York was the birthplace of this

[4] The Court of Appeals noted that "[a]ccording to one estimate, the traditional method of handling cargo translated into a productivity factor of 1.4 tons per man-hour; containerization has made it possible for this figure to rise to 30 tons per man-hour." (Pet. App. 5a; footnote omitted).

dynamic container revolution which, until the late 1960's, was principally confined to the New York to Puerto Rico trade. (Pet. App. 14a). Although a few metal containers were in use, starting in 1965 or 1966 (A. 9, 176, 212, 223), it was not until the early 1970's that containerization, as it is known today, first appeared in other Atlantic Coast ports, including the Ports of Hampton Roads and Baltimore. (Pet. App. 8a, 120a-121a). Thereafter, there was a dramatic increase in container traffic and by 1973, containerized cargo reached appreciable proportions in all major North Atlantic ports. (Pet. App. 8a, 121a; A. 92, 103).

Negotiating History

From the inception of containerization in the late 1950's to the present, ILA and the employers of its member-longshoremen have disagreed about the use of containers. (Pet. App. 5a-18a, 121a-122a; A. 122-123, 221, 604-621). Steamship carriers, stevedores and other shipping employers, through their collective bargaining representatives, CONASA, NYSA, Hampton Roads Shipping Association ("HRSA") and Steamship Trade Association of Baltimore ("STAB"),[5] have consistently taken the position that their containers should be permitted to move on and off the docks without any ILA imposed restrictions. Conversely, ILA has strenuously resisted the use of containers. (A. 118-123, 220-221, 604). It has argued, just

[5] NYSA, HRSA and STAB are membership associations which act, on behalf of their members, as multi-employer collective bargaining representatives in the negotiation and administration of labor contracts with ILA. CONASA has represented constituent shipping associations, including NYSA, HRSA and STAB, in ports from Massachusetts to Virginia. Since its formation in 1970, CONASA has bargained with the ILA over certain key issues, including containerization, on a master-contract basis. Prior to the formation of CONASA, North Atlantic ports generally adopted the master terms of the labor agreement negotiated in the Port of New York. (Pet. App. 6a, 138a-139a; A. 17, 89).

as this Court has already held in *Northeast Marine* and *Pfeiffer,* that the container itself is a part of the hold of a steamship vessel. Consequently, the ILA has contended that the container should be loaded and unloaded by ILA longshoremen piece-by-piece and package-by-package, as had been done traditionally. The inevitable result was a sharp and acerbic labor relations conflict which was finally resolved—after years of costly labor strife—at the collective bargaining table. (Pet. App. 5a-6a, 8a-18a, 62a-79a, 141a-148a; A. 235-286, 316-326).

The first contractual attempt to resolve the issue of containerization was the 1959 collective bargaining agreement between ILA and NYSA in the Port of New York. (Pet. App. 14a, 93a; A. 605-606). It permitted the shipping employers' use of containers and the transport of full shipper's loads[6] without handling of their contents by longshoremen on the piers, subject only to the payment of a royalty, the amount of which was fixed by an arbitrator's award. (Pet. App. 15a; A. 17-18, 606-607). This accord conformed to the traditional pre-containerization practice of allowing manufacturers and other volume shippers to preload cargo receptacles. However, the 1959 labor agreement provided that local LCL cargo,[7] originating in or destined to a point within the area of the Port of New York, which historically arrived at or was picked up at the piers piece-by-piece, was to be loaded into and unloaded from steamship carrier containers at the piers by ILA longshore labor in order to preserve this traditional dock work. (Pet. App. 15a; A. 606).

[6] A full shipper's load ("FSL") is a full container load of goods beneficially owned by a single shipper or consignee, which loads or unloads the container at its own place of business. (Pet. App. 9a, 120a, 140a; A. 9, 57, 176).

[7] Shipments with volumes smaller than the capacity of a container are known as LCL ("less-than-containerload") or LTL ("less-than-trailerload") cargo. (Pet. App. 9a, 120a, 140a; A. 9).

Hundreds of grievances, dozens of work stoppages and wildcat strikes by ILA during the succeeding 10 year period evidenced the inadequacy of the 1959 contractual solution. (Pet. App. 6a-7a, 16a, 21a; A. 607-615). During this time, ILA accused NYSA and its steamship carrier members of violating their labor contract by aiding in the diversion of local LCL cargo away from the piers. ILA objected to the carriers' release of their containers to off-pier consolidation facilities which were beginning to emerge in this period.

The Rules on Containers

After the introduction of the first fully containerized vessel into the major North Atlantic trade in 1967 and the published plans by many shipping employers to embark upon full container operations, ILA demanded the right to load ("stuff") and unload ("strip") *all* containers in the 1968 collective bargaining negotiations. (Pet. App. 16a; A. 610). This demand was rejected and a 57-day strike ensued on the North Atlantic Coast. (Pet. App. 6a, 16a-17a; A. 123, 610).[8] The Presidential Board of Inquiry, established pursuant to the national emergency provisions of the Taft-Hartley Act, 29 U.S.C. § 171, *et seq.* (1976), reported that the critical issue separating the parties was the consequences of containerization. (A. 610-611). Under unrelenting strike pressure, and with the assistance of federal mediators appointed by the President of the United States, the shipping employers reluctantly reached agreement with ILA. (Pet. App. 6a-7a, 17a; A. 610-611). The resulting collective bargaining agreement, which was adopted in all North Atlantic ports, including New York, Baltimore and Hampton Roads, contained the Rules on Containers ("Rules")—essentially the same contractual provisions as those being challenged in the present case.

[8] The strike continued for more than 100 days in other Atlantic and Gulf ports. (A. 610).

The Rules represented a compromise between labor and management on the containerization issue. (Pet. App. 5a-18a, 121a-122a; A. 118-123, 220-221, 604-621). The shipping industry would have preferred unrestricted containerization. Nevertheless, it recognized that ILA had the right to demand and negotiate contract provisions preserving the work of its members. Similarly, ILA realized that it could not unreasonably impede technological progress. The basic compromise underlying and embodied in the Rules enabled containerization to flourish, producing a monumental increase in longshore work productivity. (*See,* p. 5, n.4, *supra*). (Pet. App. 4a-5a, 121a; A. 150, 210-212, 214, 603, 627-628).

ILA permitted the overwhelming bulk, or more than 80% of the container traffic on the Atlantic and Gulf Coasts,[9] consisting of FSL containers, as well as all other containers which originate at or are destined to points 50 or more miles from a port, to pass over the piers intact without any stripping or stuffing by ILA represented dockworkers. (A. 121-122, 215, 612). In exchange, the shipping employers agreed that any loading or unloading of their containers with cargo from within the local 50 mile port area (other than FSL cargo by employees of the beneficial owner of the cargo) would continue to be performed by their own longshore employees at the piers, as it had traditionally. (Pet. App. 9a-10a; A. 121-122, 235-242, 270-276, 612). This local cargo could feasibly and economically be loaded or

[9] In the Port of New York alone, more than 1,000,000 containers are currently transported each year. However, containerization still left a substantial amount of work on the piers. From the inception of containerization to the present time, every container steamship line has maintained an LCL facility at its piers where substantial quantities of LCL cargo are loaded into and discharged out of ocean containers by ILA represented dockworkers. In 1975, in the Port of New York, approximately 2,000 longshore employees worked in excess of 3 million manhours handling over 1.5 million tons of LCL cargo. (A. 604). The purpose and intent of the Rules was to maintain and preserve this longshore work from displacement to local off-pier work sites.

unloaded for ocean transport at the piers. The shipping employers acceded to the Rules which were designed to preserve this small portion of their employees' traditional work practices.[10]

Shortly after the Rules were formalized in the 1968 labor contract, their validity was upheld—first, under the Labor Management Relations Act, 1947, as amended ("LMRA"), 29 U.S.C. § 141, *et seq.* (1976), by a Regional Director and General Counsel of the NLRB, and then under the antitrust laws by the United States Court of Appeals for the Second Circuit in *ICTC.* (Pet. App. 39a-40a; A. 621).

In 1971, after another long strike of 56 days' duration, the resulting labor contract with the ILA, now negotiated by CONASA, left the 1968 Rules intact. (Pet. App. 10a-11a; A. 243-250, 615). Despite the contractual formality of the Rules, ILA continued to assert that the shipping employers were permitting, if not encouraging, violations of the labor contract, thus depriving ILA members of their traditional work. (A. 615-618). Faced with the ILA strike threat to halt the movement of all containers if the Rules were not effectively enforced, the shipping employers capitulated in 1973 to an amendment to the collective labor contract, known as the Dublin Supplement, that was designed to eliminate the violations cited by ILA. (Pet. App. 17a-18a; A. 264-269, 617).

In the Port of New York, the ILA's principal complaint was directed against the shipment of consolidated con-

[10] To induce on-pier performance of this work, the Rules provided that any export container which was loaded at a local off-pier facility located within 50 miles of a port, was to be stripped and stuffed into a container at pierside by ILA longshoremen. The converse applied to an import container; its contents would be stripped at the pier, if it was to be unloaded at an off-pier facility within the local 50 mile port area. (Pet. App. 9a-10a, 62a-79a, 141a-148a; A. 235-286, 316-326). The traditional exemptions for mail, household effects and FSL cargo loaded or unloaded by the beneficial owner were retained. (A. 121-122, 602-603, 612).

tainers (loaded with the individual cargo lots of several shippers), even though their contents had not been handled by longshoremen at the docks. To preclude this type of violation of the Rules, the Dublin Supplement expressly prohibited the shipping employers from releasing their containers to off-pier consolidation facilities. (A. 264-269, 617). The shipping employers were to advise the consolidation companies to deliver their loose cargo lots to the pier where they would be physically loaded in the first instance into the shipping employers' containers by their own longshore employees. Any import consolidated container was to be stripped at pierside and its contents picked up by the consolidator in uncontainerized form.

In Hampton Roads and Baltimore, the controversy between the ILA and the shipping employers centered upon imported FSL containers which, although designed for delivery intact to their consignees, were stopped short of their ultimate destination and stripped at warehouses or trucking stations within 50 miles of the port ("shortstopped containers"). (Pet. App. 44a-45a, 122a). The Dublin Supplement expressly reflected the longstanding and unequivocal understanding of both the ILA and the shipping employers that shortstopped containers lost their FSL identity, and were the equivalent of consolidated containers to be stripped at the piers. (Pet. App. 12a, 123a). However, the ILA agreed in the Dublin Supplement to an exception from the pierside stripping requirements of the Rules for FSL containers destined for unloading at warehouses within the 50 mile port area, provided their contents were genuinely warehoused for the customary 30 day period. (Pet. App. 12a, 45a, 123a).

The basic principles embodied in the 1968 and 1971 Rules and the Dublin Supplement were retained in the 1974 Rules on Containers that were the subject of the Board proceedings in this case. (Pet. App. 13a, 18a, 122a, 148a; A. 251-263, 277-286).

The *Dolphin* Proceeding (New York)[11]

Respondent Dolphin Forwarding, Inc. ("Dolphin") and San Juan Freight Forwarders, Inc. ("SJF") are engaged in the forwarding of cargo for ocean transport between the continental United States and Puerto Rico. (Pet. App. 92a). SJF was organized in 1972; Dolphin commenced business operations in 1964. (Pet. App. 21a-22a; A. 545).[12] Neither has ever consolidated LCL cargo with its own employees. Each solicited LCL cargo from various shippers and arranged for its consolidation into ocean containers within the 50 mile area of the Port of New York. (A. 631-634). Dolphin contracted with several inland warehouses and trucking terminals for this purpose. SJF had an exclusive off-pier consolidation agent whose employees were represented by a non-longshore ILA warehouse local. (A. 528).[13] Each successfully evaded the Rules.[14]

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[11] *International Longshoremen's Ass'n (Dolphin Forwarding, Inc.)*, 236 N.L.R.B. 525 (1978). (Pet. App. 90a-109a).

[12] Dolphin was established with the active participation and assistance of Seatrain Lines, Inc. ("Seatrain"), a major steamship carrier in the New York to Puerto Rico trade. Seatrain proposed Dolphin's formation and actively assisted Dolphin in the solicitation of customers. Dolphin rewarded Seatrain by transporting all of its shipments on Seatrain vessels. (A. 492-498, 633-634).

[13] The Board's assertion that non-ILA labor consolidated shipments for SJF's account (PB 12) is factually inaccurate. This factual error belies the Board's erroneous suggestion that the Rules only interdicted off-pier consolidation if it were performed by non-ILA labor. (PB 11, 13). Like SJF's consolidation agent, the consolidator in *ICTC* employed ILA represented warehouse labor at its off-pier facility. ILA nevertheless enforced the Rules against both consolidators since the Rules were intended to preserve the on-pier work functions of ILA longshore labor, not union members generally. 426 F.2d at 889. *See generally, NLRB* v. *National Maritime Union*, 486 F.2d 907 (2d Cir. 1973), *cert. denied*, 416 U.S. 970 (1974).

[14] On the shipping documents transmitted to the ocean carrier, SJF depicted the origin of the containers as Chicago, Illinois even

(footnote continued on following page)

In late 1974 and early 1975, the Rules were enforced against two shipping employers, Maritime Transportation Management, Inc. ("MTM") and its predecessor, Transamerican Trailer Transport, Inc. ("TTT").[15] They were fined for furnishing off-pier access to their containers to Dolphin and SJF and for permitting shipment without pier-side stuffing and stripping of containers consolidated off-pier by Dolphin. (Pet. App. 24a-25a). When the shipping employers, in accordance with the Rules, advised SJF and Dolphin that they must truck their LCL cargo to the piers where it would be loaded into PRMSA's ocean containers by its longshore workers for transport on PRMSA's vessels,[16] these consolidation companies filed unfair labor practice charges with the NLRB.

(footnote continued from preceding page)

though they had been loaded in the New York area. (A. 540-544, 589-594). When SJF's evasive practices were exposed shortly after the inception of its operations, its shipments were consistently stripped and stuffed at the piers. (A. 542-544). It was the fixed policy of Dolphin from the inception of its operations to "continue to show Hanover [Massachusetts as the origin] as we did in the ST [*i.e.*, Seatrain] days" (A. 586), despite the fact that the containers were consolidated at warehouse facilities within the Port of New York area. (A. 485-486, 500-507, 583-587). When Dolphin's deception was discovered, its operations manager candidly admitted that "we [Dolphin] had been found." (A. 486, 585).

[15] After September 1, 1974, Puerto Rico Maritime Shipping Authority ("PRMSA"), an agency of the government of Puerto Rico, acquired the vessels and facilities of all the carriers then operating in the New York to Puerto Rico trade, *viz*, Sea-Land, Seatrain and TTT. (A. 544). PRMSA's vessels and New York waterfront terminals were managed by MTM and Puerto Rico Marine Management, Inc. ("PRMMI").

[16] The shipping employers *never* refused to "supply them with containers or provide space aboard their vessels" and *never* "ceased doing business with Dolphin and San Juan", contrary to the Board's incorrect assertion. (PB 13; *see also*, Dolphin Brief 4). Dolphin decided that it would be cheaper to route its shipments to the Port of Jacksonville, Florida for ocean transport to Puerto Rico. (A. 499). SJF, however, continued operations with PRMSA in the Port of New York.

An application by the NLRB for a preliminary injunction under LMRA § 10(l) was denied. *Danielson* v. *International Longshoremen's Ass'n,* No. 75 Civ. 4027 (S.D.N.Y. Sept. 18, 1975). The charges were then litigated before an Administrative Law Judge who struck all defenses and rejected virtually all defense evidence because he considered the case before him to be dispositively controlled by the Board's earlier *Conex* decision. (A. 576-582).[17] An initial decision by the Administrative Law Judge was waived. (A. 573). Thereafter, the charges were transferred for decision to a panel of the Board (A. 574-575), which also expressly considered *Conex* to be controlling. (Pet. App. 94a-95a). It thus concluded that the Rules constituted a hot cargo agreement in violation of LMRA § 8(e), 29 U.S.C. § 158(e) (1976), and that their enforcement by ILA against the shipping employers was proscribed secondary activity in violation of LMRA § 8(b)(4), 29 U.S.C. § 158(b)(4) (1976).

The *Associated Transport* Proceeding—(Baltimore and Hampton Roads)[18]

Associated Transport, Inc. ("Associated") and Respondent Houff Transfer, Inc. ("Houff") are engaged in interstate motor carriage. (Pet. App. 19a, 137a-138a).[19] A minor portion of their operations has consisted of the drayage of import FSL ocean cargo from waterfront terminals in the Ports of Baltimore and Hampton Roads. When any

[17] *International Longshoremen's Ass'n (Consolidated Express, Inc.),* 221 N.L.R.B. 956 (1975), *enf'd,* 537 F.2d 706 (2d Cir. 1976), *cert. denied,* 429 U.S. 1041 (1977).

[18] *International Longshoremen's Ass'n (Associated Transport, Inc.),* 231 N.L.R.B. 351 (1977). (Pet. App. 110a-184a; A. 465-468).

[19] Associated is a member of Tidewater Motor Truck Association ("TMTA"), a trade association of trucking companies operating in the Hampton Roads area. (Pet. App. 138a-139a). TMTA is a respondent in this case.

trucker procures cargo at an ocean terminal, it presents a bill of lading (A. 298-301) and a delivery order (A. 287, 303), signed by the consignee, authorizing the steamship carrier to release the cargo to the trucker. (A. 51-52). This cargo is delivered in loose lots unless the trucker has an interchange agreement (A. 289-297, 407-419) with the ocean carrier permitting the trucker's use of the carrier's container.

Neither the bill of lading, the delivery order nor the interchange agreement controls or relates to the unloading of the container. (A. 49-50, 188-189). These documents do not authorize the trucker's removal of the cargo from the container prior to its delivery to the ultimate consignee.[20] They indicate instead that the container is destined for delivery intact to the consignee. (A. 223-224). Whenever a steamship carrier was informed that intact delivery would not occur, and that the trucker intended instead to unload the container at an inland facility within the 50 mile port area, the carrier had the container stripped at the pier by its longshore employees. (A. 21, 89-90). Indeed, it was admittedly (PB 17 n.16) the customary practice for all FSL containers destined to local port warehouses to be routinely stripped at the piers.[21]

These practices reflected the unequivocal and consistent interpretation by both labor and management in the long-

[20] TMTA argues that these documents do not "restrict the motor carrier's right to stuff or strip containers." (TMTA Brief 13). More importantly, however, neither do they permit such short-stopping. (A. 49). At best, it can be reasonably concluded that the interchange agreement clearly evidences the steamship carrier's unqualified control of its container and thus of the work of loading and unloading this equipment. The bill of lading and delivery order, on the other hand, have no relevant bearing since they merely facilitate the transfer of the cargo—whether containerized or loose—from the water to the land mode of transportation.

[21] This practice remained in effect until the adoption in 1973 of the Dublin Supplement's warehouse exemption. *See* p. 11, *supra.*

shore industry that the Rules prohibited shortstopping of FSL containers at local warehouses or trucking terminals. (Pet. App. 11a-12a, 124a-125a; A. 40-41, 102-103, 122, 165-166, 180-182, 222-223, 231-234).[22] In essence, a shortstopped container loses its FSL identity and becomes a consolidated container which must be stripped at the piers.[23]

Associated, Houff and other truckers were intimately aware, since as early as 1969, that, under the Rules, if an FSL container was to be stripped by other than the consignee's own employees within the 50-mile port area, this work had to be performed by longshoremen at the piers. (A. 11, 65, 71-72, 74-75, 207-209). Nevertheless, these truckers covertly carted FSL containers, destined for direct, intact delivery to their consignees, to trucking terminals located a short distance from the piers where they stripped the cargo and restuffed it into their over-the-road trucks. (A. 40, 56, 163).

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[22] From the inception of the container Rules in 1968, the joint labor-management committees in the Ports of Baltimore and Hampton Roads, entrusted with implementation of the Rules, regularly fined any steamship carrier which did not strip an FSL container that was shortstopped and unloaded at a local off-pier trucking or warehouse terminal. (A. 453-463).

[23] The Board contends that "no provisions in the Rules required ILA labor to strip FSL cargo at the pier until 1974". (PB 17; *see also,* Houff Brief 11). Conversely, nothing in the Rules ever prohibited pierside stripping of FSL cargo. Actually, neither the 1968, 1971 nor 1974 Rules ever expressly referred to full shipper's loads. They required pierside stripping of "LTL loads" and "consolidated full container loads". A shortstopped FSL container unloaded within the local port area by truckers or warehousemen became a "consolidated full container load" interdicted by the Rules. This was the unambiguous interpretation of the Rules jointly adopted by both labor and management in the longshore industry. In their collective judgment, shortstopping contravened the fundamental compromise struck by the Rules that any unloading of steamship carrier containers within the local port area, by other than the employees of an FSL beneficial owner-consignee, was traditional longshore work that should continue to be performed at the piers.

This shortstopping was essentially designed to increase the trucker's net profits by stripping the smaller ocean containers and consolidating their contents into larger over-the-road trucks. (PB 16; *see also,* TMTA Brief 14-15). However, the Board admits that truckers, both before and after containerization, picked up loose cargo at the piers. (PB at 14 n.13, 17 n.16). If a trucker finds it more profitable to haul cargo in its own larger trucks, no sound reason exists for it to change unilaterally its traditional practice of arranging for the longshoremen to strip the ocean container at the pier and to load its loose contents into the trucker's equipment. The trucker's adherence to this traditional practice would achieve its economic objective and at the same time preserve the longshoremen's traditional work of handling ocean cargo at the piers which includes its transfer to inland transportation. *Pfeiffer,* 48 U.S.L.W. at 4201.[24]

In 1974, two shipping employers, United States Lines and Lavino Shipping Company, were fined for violating the Rules on Containers in the Ports of Hampton Roads and Baltimore. (Pet. App. 23a-24a, 154a, 156a; A. 196-197, 398-399). Their containers had been shortstopped and stripped within the 50 mile port area at off-pier terminals operated by Associated and Houff. When Associated and Houff refused to reimburse the fines, the shipping employers rescinded the authority of these motor carriers

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[24] Similarly, putative safety or regulatory considerations (PB 6; *see also,* TMTA Brief 14) do not justify shortstopping. The interchange agreement specifically requires the lessor-ocean carrier to insure compliance with pertinent governmental regulations. (A. 292-293 ¶ Fifth (c)). If there are safety or regulatory deficiencies, the trucker should instruct the ocean carrier to remedy them during the pierside inspection of the container, prior to its release to the trucker. (A. 55, 191). The ocean carrier, at its own expense (A. 354-355), would then have its longshore employees correct any defects by rearranging the cargo or stripping and reloading it into another ocean container, or into the trucker's vehicle, thereby fulfilling its obligations to the trucker under the interchange agreement.

to haul the employers' containers. (Pet. App. 23a-24a, 155a-157a; A. 197-198, 329, 340, 404-405).[25]

Associated, Houff and TMTA then filed unfair labor practice charges with the NLRB. This initially set in motion two proceedings that ultimately resulted in the issuance of preliminary injunctions under LMRA § 10(l), 29 U.S.C. § 160(l) (1976), but only after diametrically divergent district court determinations on the same basic facts. *Compare Humphrey* v. *International Longshoremen's Ass'n,* 401 F.Supp. 1401 (E.D. Va. 1975), *rev'd,* 548 F.2d 494 (4th Cir. 1977) (injunction denied in Port of Hampton Roads, but reversed on appeal) *with Humphrey* v. *International Longshoremen's Ass'n,* No. Y-75-1395 (D.Md. Mar. 25, 1976) (injunction granted in Port of Baltimore).

The charges were then litigated before an Administrative Law Judge who concluded, in strict reliance upon the earlier *Conex* decision, that the Rules violated LMRA § 8(e), and that ILA's coercion of the shipping employers to enforce these contractual provisions violated the secondary boycott proscriptions of LMRA § 8(b)(4). A three member panel of the Board affirmed in a split opinion.

The Decisions of the Board

The Board's decisions in *Associated Transport* and *Dolphin* are virtually identical. In each case, the Board adjudicated the same fundamental question: whether the Rules are lawful work preservation provisions designed to

[25] Under the Rules, only the steamship employers were responsible for payment of the fines. The Rules neither required nor suggested reimbursement or the imposition of any other sanctions upon the trucker. The ILA did not demand, advise, assist nor in any way become involved with the steamship carrier's attempt to obtain reimbursement from the trucker (A. 219-220) or to cancel the carrier's interchange agreement with the trucker. (A. 36).

preserve for longshoremen their traditional work functions which were threatened by technological displacement.

In each case, the Board's invalidation of the Rules, as an unlawful work acquisition agreement, did not result from the exercise of its fact-finding powers. The facts in each case were undisputed. Instead, the Board's conclusion rested upon a fundamental error of law stemming from its adjudication of the elementary threshold issue present in every work preservation case, namely the definition of the work in controversy.

The Board, as it had in *Conex,* defined the work in controversy by focusing exclusively on the off-pier stuffing and stripping of containers by consolidators' and motor carriers' employees who had acquired this work as a result of the innovation wrought by containerization. In the Board's view, since the longshoremen's work jurisdiction has always been confined to waterfront facilities, they necessarily could not have traditionally performed the work in controversy, and, hence, by definition, the Rules must amount to an unlawful work acquisition device.

The Decision of the Court of Appeals

The Court of Appeals panel by majority vote reversed and vacated the Board decisions. The Court concluded, as a matter of law, that the Board erroneously misinterpreted and misapplied the doctrine of work preservation formulated by this Court in *National Woodwork Manufacturers Ass'n* v. *NLRB,* 386 U.S. 612 (1967) and *NLRB* v. *Enterprise Ass'n of Steam, etc. Pipefitters,* 429 U.S. 507 (1977).

The Court of Appeals principally disagreed with the Board's definition of the work in controversy. It found this definition to be legally defective since it had been constructed by completely ignoring the traditional work practices performed by longshoremen prior to the introduction

of the technological innovation of containerization.[26] In the Court's view, the Board's analysis thus failed to examine "all of the surrounding circumstances" prescribed in *National Woodwork* and *Pipefitters* and, if allowed to prevail, would virtually obliterate the doctrine of work preservation.

> This formulation of the work in controversy, however, could not reasonably have been based on 'all the surrounding circumstances' as required by *National Woodwork* and *Pipefitters*. When a technological innovation is introduced in the workplace, new work may be created and may initially be performed, as in these cases, by employees other than those who worked with the old technology. The crucial question is how best to rationalize the work that results from the innovation into traditional work patterns. As a rule, this cannot be done by ignoring those traditional work patterns when defining the work in controversy. But that is precisely what the NLRB has done here. Rather than define a category of work based on work patterns both prior and subsequent to the innovation, the Board has defined the work in controversy specifically in terms of the innovation, thus by *definition* removing any opportunity for pre-innovation workers to preserve their work. Under such a formulation the Supreme Court's work preservation doctrine is sapped of all life.

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[26] The Board's error of law is especially pronounced in light of the fact that the Board completely overlooked the striking similarities between the traditional work practices of longshoremen and the work of stuffing and stripping containers. It refused to adopt the inescapable conclusion previously reached by this Court that stuffing and stripping containers is the functional equivalent of traditional longshore work practices. *Northeast Marine, supra, aff'g, Pittston Stevedoring Corp.* v. *Dellaventura*, 544 F.2d 35 (2d Cir. 1976); *Pfeiffer, supra. Accord, Stockman* v. *John T. Clark & Son of Boston, Inc.*, 539 F.2d 264, 272, 275-277 (1st Cir. 1976), *cert. denied*, 433 U.S. 908 (1977); see also, *Leather's Best, Inc.* v. *S.S. Mormaclynx*, 451 F. 2d 800, 815 (2d Cir. 1971).

Pet. App. 46a-47a; emphasis in original and footnotes omitted.

The Court of Appeals also exposed two other fatal legal flaws in the Board's decisions. Each involved a basic misapplication by the Board of a key work preservation principle established by this Court in *National Woodwork* and *Pipefitters*. The first related to the "touchstone" of analysis sculptured by the *National Woodwork* Court for every work preservation case, namely, whether the challenged agreement or its implementation is addressed to the labor relations of the contracting employers *vis-a-vis* their own employees. 386 U.S. at 645. Conspicuously absent in this case was any organizational or other secondary purpose on the ILA's part with respect to the labor relations of the motor carriers or consolidators. Nevertheless, as the Court of Appeals panel concluded, the Board erroneously discounted this critical element of valid primary work preservation activity. (Pet. App. 53a-54a).

The second defect highlighted by the Court of Appeals was the Board's disregard of another key work preservation principle, namely, the Board's own right of control test sanctioned by this Court in *Pipefitters*. The Board simply never mentioned this test. It failed to take into account the contracting shipping employers' power of control to assign the disputed container stuffing and stripping work to their own ILA represented longshore employees—another crucial element of a lawful, primary work preservation clause. (Pet. App. 55a-57a).

In essence then, the Board is abandoning the traditional administrative agency role of applying established legal precedent to the facts and is instead following a novel decision-making course, first embarked upon in *Conex*, in which it has unilaterally altered the elementary principles of this Court's work preservation doctrine. If left unchecked, the effect of the Board's errant departure from

established precedent will be the demise of the work preservation doctrine. The Court of Appeals for the District of Columbia Circuit has exposed the fundamental legal errors being committed by the Board. In so doing, it has irreconcilably disagreed with the Second Circuit's decision in *Conex*.

Respondents NYSA and CONASA respectfully submit that the District of Columbia Circuit's determination in this case is the only legally correct decision and that the previous adjudications by the Board and Second Circuit in *Conex* are in error.

Summary of Argument

I.

This case presents a pure question of law involving the legal standards prescribed in the doctrine of work preservation. This doctrine requires the Board, in adjudicating the legality of a work preservation agreement, to focus upon the historical work functions performed by the employees protected by the challenged collective bargaining provision prior to the emergence of the technological innovation that displaced that work. *National Woodwork,* 386 U.S. at 615-616, 646; *Pipefitters,* 429 U.S. at 522-523.

In invalidating the Rules on Containers in this case, the Board contravened this fundamental work preservation principle. It erroneously focused upon work performed away from the protected unit's work situs because of innovation. The work in controversy in this case is not, as the Board erroneously concluded, the stuffing and stripping of containers at off-pier trucking or consolidation depots. It is the work traditionally performed by longshoremen at the piers in handling and preparing cargo for ocean transport. Containerization did not produce new and distinct

work practices. Stuffing and stripping containers is essentially the functional equivalent of traditional longshore work practices. *Northeast Marine,* 432 U.S. at 270-271; *Pfeiffer,* 48 U.S.L.W. at 4021. This body of longshore pier functions is the work in controversy.

The Board's failure to adopt this definition constituted a misapplication of the work preservation doctrine. If the Board's definition should prevail, then the doctrine of work preservation fashioned by this Court in *National Woodwork* and *Pipefitters* has been overruled, and virtually every effective work preservation clause would be declared invalid.

The Board compounded its erroneous definition of the work in controversy by failing to assign any significance to the undisputed fact that the longshoremen in this case had no organizational or other secondary designs to influence the labor relations of off-pier trucking and consolidation companies. The Board argues that absence of these secondary objectives is not relevant since the effect of the Rules on Containers, not their purpose, is the controlling factor. The Board's analysis conflicts with the fundamental principle that the union's purpose is the "touchstone". *National Woodwork,* 386 U.S. at 644-645. The Rules on Containers are not unlawful merely because they have an impact upon third parties. *Id.* at 627.

The Board's defective definition of the work in controversy also taints its right of control analysis. Contrary to the Board's contention, the longshoremen do not claim any off-pier work. Trucking and consolidation employees may continue to stuff and strip their employers' trucks and other equipment off-pier. However, all of the containers involved in this case are the property of the longshoremen's steamship carrier employers who have full right, dominion and control over their disposition. These carrier con-

tainers are the embodiment of pierside cargo handling work traditionally performed by longshoremen—the work in controversy in this case. The Rules merely prohibit the longshoremen's employers from displacing their employees' traditional work by requiring the employers to retain their containers at the piers. As the Court of Appeals concluded, "[i]t is difficult to imagine a more forceful demonstration of control." Pet. App. 57a. The Circuit Court simply underscored the fact that nowhere in the Board decisions addressing the Rules is there any doubt that the right of control resided in the longshoremen's employers.

II.

Houff contends that the longshoremen waived or abandoned their right to unload shortstopped containers at the piers. No case—not even the Board decisions in this litigation—has ever adopted Houff's alleged rule of abandonment. The absence of any express shortstopping prohibition in the early version of the Rules on Containers, entered into when containerization was in its infancy, did not constitute an irrevocable waiver of the longshoremen's work rights, particularly when there was no conscious, express abandonment, nor any *quid pro quo* therefor, and when there was an equivocal, contemporaneous contractual interpretation, both verbally and in practice, that a shortstopped container lost its FSL identity and became a consolidated container to be stripped at the piers under the Rules.

III.

The putative economic impact theory advocated by the Board is directly contrary to the established principle that the lawfulness of a work preservation agreement

does not depend upon "economic and technological factors". *National Woodwork,* 386 U S. at 644; *cf., NLRB* v. *Fruit and Vegetable Packers, Local 760,* 377 U.S. 58, 72 (1964). The thrust of the Board's theory is that the Rules on Containers, or any other work preservation agreement, is subject to invalidation whenever it does not satisfy the Board's chosen economic calculus. This theory irreconcilably conflicts with the fundamental tenet of national labor policy favoring resolution of the conflicting interests of technological innovation and job security through collective bargaining. *National Woodwork,* 386 U.S. at 640-644.

The Rules on Containers represent a collectively bargained accommodation. They are "a reasoned response to the difficult problem of technological innovation and . . . an exemplar of the self-government contemplated by Congress when it left the bulk of industrial problems to be resolved in the private sector." Pet. App. 60a. The Board proposes to upset the compromise embodied in the Rules simply because it does not suit the Board's economic philosophy. It achieves this improper result by arbitrarily defining the work in controversy in terms of the work practices it chooses to promote. The Board's approach, if left undisturbed, threatens to thwart the process of collective bargaining.

ARGUMENT

I

The Rules on Containers are lawful work preservation provisions.

Standard of Review

This case presents a pure question of law relating to the standards prescribed in the doctrine of work preservation for defining the "work in controversy". The facts in this case are not in dispute. Indeed, the Board admitted in its brief to the Court of Appeals that "petitioners' real complaint is with the Board's analytic framework not its findings of fact." (Pet. App. 58a).

The Board's attempt at this juncture to convert this case into a factual controversy warranting invocation of the substantial evidence rule (PB 33-34; *see also,* TMTA Brief 39-40; NVOCCS Brief 9; ATA Brief 6; Construction Associations Brief 10-11) is a sweeping reversal of its previous forthright presentation to the Court of Appeals. There it claimed discretion to define the work in controversy as it chooses. Brief for Respondent NLRB at 16, 22, *International Longshoremen's Ass'n* v. *NLRB,* No. 78-1510 (D.C. Cir. 1979). Its choice does not depend upon any factual determination.[27] Consequently the Court of Ap-

[27] The various jurists who have disagreed with the Board's adjudication involving the Rules on Containers have done so while in total agreement on the facts before them. Their different conclusions have turned solely on the basic question of law concerning the correct definition of the work in controversy. *See, e.g.,* Pet. App. 57a-59a; *Conex,* 537 F.2d at 712-713 (*Feinberg, J., dissenting*); *Humphrey* v. *International Longshoremen's Ass'n,* 548 F.2d 494, 501 (4th Cir. 1977) (*Craven, J., dissenting*); *see also, Consolidated Express, Inc.* v. *New York Shipping Ass'n,* 452 F.Supp. 1024, 1040 n.14 (D.N.J. 1977), *aff'd in part and rev'd in part,* 602 F.2d 494 (3d Cir. 1979), *petitions for cert. filed,* 48 U.S.L.W. 3001 (U.S. June 22, 1979) (Nos. 78-1902, 78-1905 and 79-221).

peals properly exercised wide latitude, unrestricted by the constraints of the substantial evidence rule, in adjudicating the legal validity of the Board's chosen analytic framework. *NLRB* v. *Brown,* 380 U.S. 278, 290-292 (1965); *NLRB* v. *Babcock & Wilcox Co.,* 351 U.S. 105, 112 (1956).

The Work In Controversy

The crucial question in this case, as well as in every work preservation case, is the frame of reference or starting point for defining the work in controversy. The Board may not arbitrarily focus at any starting point. Rather, the *National Woodwork* guideline or surrounding circumstance test that it must follow is "the remoteness of the threat of displacement *by* [*not of*] the banned product or service". 386 U.S. at 644, n.38. The Board must examine the historical work functions of the protected bargaining unit performed prior to the emergence of the technological innovation.[28] This is the work that is being displaced; this is the work that the challenged work preservation clause seeks to protect and preserve.

In *National Woodwork* this Court focused on the pre-innovation work of fitting blank doors historically performed on the construction site by job-site carpenters in the unit protected by the work preservation clause. These work functions were being threatened and virtually extinguished by the technological innovation of prefabricated doors manufactured at off-site plants.

The Board in this case, however, completely disregarded this elementary standard of work preservation analysis. It arbitrarily selected as its starting point the work performed after innovation by employees outside of the protected unit. (Pet. App. 95a, 116a). It improperly ignored

[28] *Pipefitters* reaffirmed the *National Woodwork* requirement of examining "the history . . . of the relevant jobsite work traditionally performed" by the employees protected by the challenged work preservation agreement. 429 U.S. at 522-523.

the traditional work performed by the protected unit prior to the advent of the innovative change that displaced the unit's work and allowed it to be performed elsewhere.

Contrary to the Board's current *post hoc* rationalization (PB 34; *see also,* TMTA Brief 51-52), its selection did not rest upon any fact-finding exercise. The Board decisions in this case are devoid of any factual explanation or justification for its chosen definition of the work in controversy. The Board did not undertake any factual assessment of the functional similarities or distinctions between traditional pierside work before containerization and off-pier stuffing and stripping of containers after the emergence of the technological innovation. There was no factual adjudication that this off-pier work possessed any special functional characteristic or feature that distinguished it from pre-containerization pierside cargo handling work practices.[29]

The sole foundation for the Board's definition is locational. The Board focused exclusively upon the post-containerization off-pier work and reasoned that it was not traditional longshore work simply because longshoremen have always done their work at the piers. (PB 37; *see also,* TMTA Brief 43, NVOCCS Brief 6-7; Construction Associations Brief 15). This is evident in the Board's *Associated Transport* decision. To the Board, the longshoremen's traditional pierside unloading of FSL containers destined for shortstopping at warehouses was irrelevant because, in the Board's view, the work in issue was not FSL containers shortstopped at warehouses, but only those shortstopped at trucking terminals. (Pet. App.

[29] Contrary to TMTA's spurious contention (TMTA Brief 48), which the Board has never adopted, this is not a case in which technology has so altered the nature of the work that the protected unit employees no longer have the skill or expertise to perform it. *See generally, Carrier Air Conditioning Co.* v. *NLRB,* 547 F.2d 1178 (2d Cir. 1976), *cert. denied,* 431 U.S. 974 (1977); *Associated General Contractors of Calif.* v. *NLRB,* 514 F.2d 433 (9th Cir. 1975).

116a). However, a shortstopped FSL container is a shortstopped container whether it is stripped at a warehouse or trucking depot. The Board's rejection of this significant fact highlights its major error of capriciously defining the work in controversy *a priori* by basing its definition strictly upon the location of its performance without regard to the fact that it constitutes a displacement of traditional longshore work. However, it is "the nature, not the location" of the work that is determinative. *Pfeiffer,* 48 U.S.L.W. at 4021.

The work in controversy then is not, as the Board erroneously assumed, the work of stuffing and stripping containers performed by truckers and consolidators at their off-pier premises. It is the traditional longshore work of handling and preparing cargo for ocean shipment at the piers, including, both before and after containerization, "the preparation of cargo for shipment by making up, for example, drafts and pallets and sorting the cargo according to its consignees and delivering it to the trucks or other carriers" and, also including after containerization, "packing and unpacking containers . . . at the docks". *ICTC,* 426 F.2d at 886, 889.

> In effect, the operation of loading and unloading has been moved shoreward; the container is a modern substitute for the hold of the vessel. As Judge Friendly observed below, 'stripping a container . . . is the functional equivalent of sorting cargo discharged from a ship; stuffing a container is part of the loading of the ship even though it is performed on the shore and not in the ship's cargo holds.'

Northeast Marine, 432 U.S. 270-271 (citation omitted); *see also, Pfeiffer,* 48 U.S.L.W. at 4021.

Prior to containerization, all the work of loading, unloading, sorting or otherwise handling ocean-borne cargo was performed exclusively by longshoremen at the piers. Nevertheless, the Board closed its eyes to this historical fact by adopting the unfounded assumption that the work

involved in loading and unloading ocean containers is *sui generis*. It refuses to admit that this work is not something new, but rather is still part and parcel of the work of loading and unloading cargo for ocean shipment—work which longshoremen traditionally performed.[30]

This body of traditional longshore pier functions, which the Rules seek to protect from the threat of displacement by containerization, is the work in controversy. The Board facilely discredited the significance of these traditional longshore work practices by adopting the restrictive view that longshoremen load and unload ships. (Pet. App. 162a-163a). The Board then reasoned that any preparation of cargo for ocean shipment, including its placement or removal from containers, is merely ancillary to—not an integral part of—the actual longshore work of loading and unloading ships. (Pet. App. 163a). The Board then assumes that, if it is ancillary, container loading and unloading must be separate and distinct work having as its essential element the location of its performance. The Board's analysis is fundamentally defective since it directly conflicts with the incontrovertible reality, acknowledged in *Northeast Marine,* that container loading and unloading is integrally and functionally longshore work.

The Board now attempts to justify its erroneous definition of the work in controversy by glibly concocting two distinct markets for ocean borne cargo: (1) cargo routed

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> Containerization is relatively new. The loading and unloading of ships outruns history. The work to be preserved is the loading and unloading of ships. To focus entirely upon stripping and stuffing containers is to utterly ignore the traditional work of seamen and longshoremen, for there can be nothing traditional nor even long-established about containerization practice.
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> • • •
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> Twenty years ago the longshoremen had it all. Now they seek only to retain a part of it. This is not to me 'work acquisition'.

Humphrey, 548 F.2d at 500-501 (*Craven, J., dissenting*).

indirectly to the piers, *via* consolidators and truckers, and (2) cargo routed directly to the steamship carriers' terminals. (PB 34-35, 38-40). The absence of any mention of this economic fiction in either of the Board decisions in this case amply exemplifies its basic fallacy. The source of the cargo is irrelevant. The same shippers who, after containerization, brought their cargo to off-pier consolidators and truckers, had, prior to containerization, brought this same cargo in loose form either directly to the piers, or to off-pier consolidators or truckers, who in turn delivered it to the piers, where the cargo was loaded for ocean shipment piece-by-piece by the longshoremen.

The essential factor in this case is the loading and unloading function of ocean transport. The performance of this work, which is in integral part of the steamship carrier's operations, does not depend upon the shipper's chosen method of routing the cargo to the carrier's waterfront terminal. Whether the shipper initially routes its cargo directly to the piers or to intermediate off-pier terminals, it still must be loaded for ocean transport. The performance of this function is entirely dependent upon the steamship carrier. With the advent of containerization—concededly a concept of cargo movement developed by the carrier members of CONASA, NYSA, HRSA and STAB (Houff Brief 7)—the steamship carrier employers acquired the capability to erode the work functions of their longshore employees by releasing their ocean containers to off-pier facilities. The ILA recognized this potential threat to its members' traditional work jurisdiction and prohibited its members' employers from displacing this longshore work.

The Board's failure to define this longshore work as the work in controversy constituted a misapplication of the work preservation principles prescribed in *National Woodwork.* In that case, the carpenters, after the introduction of prefit doors, performed no work functions at their job sites on prefit doors which displaced the tradi-

tional carpentry work of cutting and fitting blank doors. It was this traditional work, performed at the construction sites before the advent of the prefabricated door, which constituted the work in controversy. The challenged work preservation clause prohibiting their employers' purchase of prefit doors, thereby enabling the carpenters to perform their traditional jobsite work of cutting and fitting blank doors, was upheld. To the longshoremen, the container is akin to the prefit door in *National Woodwork*. The off-pier stuffing and stripping of containers displaces the traditional longshore work of preparing cargo for ocean transport—the work in controversy. The Rules thus lawfully require the longshoremen's employers to discontinue the release of their containers for off-pier loading and unloading.

The Board's definition of the work in controversy in this case directly conflicts with *National Woodwork*.[31] In essence, the Board is redefining the work in controversy in *National Woodwork* in terms of the *work on prefit doors*. If the *National Woodwork* Court had adopted the Board's redefinition of the work in controversy "in terms of the innovation", *i.e.*, the work on prefit doors at the door manufacturers' plants, it would have been impelled to reach a completely different result. It would have in-

[31] The Board incorrectly distinguished *National Woodwork* on the ground that "the very work claimed had once been performed exclusively, by employees in the units represented by respondent organizations therein". (Pet. App. 166a). Actually, prefit doors were prevalent at construction sites before the enactment of the work preservation clause in issue in *National Woodwork*. In any event, the Board's putative exclusivity requirement, which is designed to justify its unwarranted definition of the work in controversy in this case, contravenes the well established principle of work recapture. *Sheet Metal Wkrs. Local 223* v. *NLRB*, 498 F.2d 687, 696, n.38 (D.C. Cir. 1974); *American Boiler Manufacturers' Ass'n* v. *NLRB*, 404 F.2d 547, 551, 554 (8th Cir. 1968), *cert. denied*, 398 U.S. 960 (1970); *Meat and Highway Drivers, Local 710* v. *NLRB*, 335 F.2d 709, 714 (D.C. Cir. 1964); *see generally, Note, Work Recapture Agreements and Secondary Boycotts: ILA* v. *NLRB (Consolidated Express, Inc.)*, 90 Harv. L. Rev. 815 (1977).

validated the clause, which prohibited the use of such prefit doors at construction sites, since, by definition, the boycotting carpenters did not perform any work on the prefit doors away from the construction site. *See, Conex*, 537 F.2d at 713 (*Feinberg, J., dissenting*).

If the Board's definition of the work in controversy should prevail,[32] then *National Woodwork* has been overruled, and virtually every effective work preservation clause would be subject to invalidation by the Board, since, by definition, it would be deemed an acquisition of work performed by employees outside of the bargaining unit after the introduction of new technology.

Primary Activity

A challenged work preservation clause and union actions to enforce it, which are "addressed to the labor relations of the contracting employer vis-a-vis his own employees", are lawful primary activities, which do not fall within the statutory proscriptions of LMRA §§ 8(b)(4) and 8(e). *National Woodwork*, 386 U.S. at 645; *Pipefitters*, 429 U.S. at 511. The union's purpose or intent is the "touchstone". *National Woodwork*, 386 U.S. at 644-646; see also, *Granddad Bread, Inc.* v. *Continental Baking Co.*, 1979-2 CCH Trade Cas. ¶ 63,017 (9th Cir. Nov. 23, 1979) (No. 78-3698). The relevant surrounding circumstance to be examined is "the

[32] The Board's definition in this case is a novel and sweeping deviation from the prevailing definition of the work in controversy observed in every work preservation case since *National Woodwork*. *See, e.g., Pipefitters; Houston Insulator Contractors Ass'n* v. *NLRB*, 386 U.S. 664 (1967); *Sheet Metal Wkrs. Local 223; Local 742, United Bro. of Carpenters & Joiners* v. *NLRB*, 444 F.2d 895 (D.C. Cir.), *cert. denied*, 404 U.S. 986 (1971); *ICTC; Canada Dry Corp.* v. *NLRB*, 421 F.2d 907 (6th Cir. 1970); *American Boiler; NLRB* v. *Local 164, IBEW*, 388 F.2d 105 (3d Cir. 1968); *NLRB* v. *Local 28, Sheet Metal Wkrs. Int'l Ass'n*, 380 F.2d 827 (2d Cir. 1967); *cf., Electro-Coal Transfer Corp.* v. *General Longshore Wkrs. Local 1418*, 591 F.2d 284 (5th Cir. 1979); *Frito-Lay, Inc.* v. *Retail Clerks Local 7*, 452 F.Supp. 1381 (D. Colo. 1978).

history of labor relations between the union and the employers who would be boycotted." *National Woodwork,* 386 U.S. at 644, n.38.

In this case, the ILA never once had a dispute, in the broadest sweep of the term, with any off-pier consolidator or trucker. Its actions have always been aimed at its primary employers, the steamship carriers.

The Board does not dispute the Court of Appeals' determination that the ILA had no organizational or other secondary designs to influence the labor relations of the trucking companies and off-pier consolidators.[33] It argues instead that the absence of these secondary objectives is not relevant, since the effect of the Rules on Containers was "to eliminate the performance of traditional job tasks elsewhere." (PB 43). However, purpose—not effect—is the controlling test.[34] A work preservation clause is not unlawful merely because it has a serious impact upon third parties. *National Woodwork,* 386 U.S. at 627; *Local 742, Carpenters; American Boiler; Local 164, IBEW; Local 28, Sheet Metal Wkrs.; cf. Anchortank, Inc.* v. *NLRB,* 601 F.2d 233 (5th Cir. 1979). Although "[t]he distinction

[33] Consequently, *International Longshoremen's Ass'n, Local 1575* v. *NLRB,* 560 F.2d 439 (1st Cir. 1977) and similar cases involving the use of a work preservation clause for secondary organizational purposes are not germane. *See, e.g., International Longshoremen's Ass'n (U.S. Naval Supply Center),* 195 N.L.R.B. 273 (1972); *cf., Connell Construction Co.* v. *Plumbers & Steamfitters Local 100,* 421 U.S. 616 (1975).

[34] Nothing in the legislative history of LMRA §§ 8(b)(4) and 8(e) would support the Board's theory. *See, e.g.,* S. Rep. No. 105, 80th Cong., 1st Sess. 22 (1947); 93 CONG. REC. 3950, 3954, 7001 (1947) (remarks of Sen. Taft); 93 CONG. REC. 5046-47 (1947) (remarks of Sen. Murray); 93 CONG. REC. A 2377 (1947) (remarks of Sen. Ball), *reprinted in* I NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 at 428, 1005-06, 1012-13, 1366-67, 1524, 1623 (1948).

between primary and secondary activity does not always turn on which group of employees the union seeks to benefit," *Pipefitters,* 429 U.S. at 528, n. 16, nevertheless it is a relevant and meaningful factor which the Board failed to consider in this case. The Board paid no attention to the threat to longshoremen and their jobs occasioned by containerization. It attached no importance to the history of labor relations in the longshore industry.

In all the turbulent history of containerization, the steamship carrier members of CONASA, NYSA, STAB and HRSA were never neutrals. They spawned the containerization technology that gravely threatened their longshore employees' job opportunities. They were the sole, direct and natural targets of the ILA's collective bargaining efforts to mitigate the effects upon its members of their employers' technological innovations. No off-pier trucking company or consolidator could satisfy the ILA's objective. Even if they were to recognize and sign agreements with the ILA (which ILA has never sought (Pet. App. 54a; A. 36, 188, 200)) and were to become signatories to the CONASA-ILA labor contract (which ILA has never sought), this still would not satisfy the ILA's objective that loading and unloading of local cargo into and out of the carriers' containers in connection with its ocean transport be performed by longshoremen at the *piers. ICTC,* 426 F.2d at 889; *see,* note 12 *supra.* Under these circumstances, the Rules on Containers could hardly have any secondary objective at off-pier facilities.

Right of Control

For the first time in the lengthy litigation involving the Rules on Containers, the right of control test is invoked by the Board. (PB 44-49; *see also,* TMTA Brief 54-56; NVOCCS Brief 11-13). In all of the Board decisions addressing the Rules, there is not the slightest trace of a doubt that the right of control resided in the longshoremen's employers. The court below simply underscored ex-

pressly what the Board had found implicitly.[35] The Board now seeks to rewrite its decisions in this case by retrospectively inserting a right of control analysis.

The Board's analysis, however, is fundamentally faulty. It is premised upon the astonishing contention that "[c]ontrol over the disposition of containers is not tantamount to control over the work in controversy." (PB 46). If, as the Board contends—albeit erroneously (*see*, pp. 27-33, *supra*)—"stuffing and stripping containers" constitutes the work in dispute, its performance necessarily depends upon the availability of containers. The same basic conclusion prevails, if, as NYSA and CONASA submit, the work in controversy is the handling and preparation of cargo for ocean shipment, since loading and unloading cargo into and out of containers is an integral feature of containerized ocean transport. In either case, the containers are the property of the steamship carriers who have full right, dominion and control over their disposition.

It was precisely for this reason that the longshoremen exacted at the collective bargaining table their employers' contractual commitment in the Rules to refrain from releasing their containers to off-pier facilities.[36]

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[35] It would appear that the First Circuit also accepts the right of control determination reached by the District of Columbia Circuit in this case. *International Longshoremen's Ass'n, Local 1575*, 560 F.2d at 447.

[36] If, in *National Woodwork*, the carpenters' employer had already purchased blank doors, which it then sent out to the manufacturers' factories to be prefit, the finding of work preservation would have been even more compelling, since this would have constituted in effect the subcontracting of the carpenters' fitting work. In this case, the Board decisions would require the steamship carriers to send out their ocean containers (blank doors) to be loaded or unloaded (fitted) at the off-pier facilities (manufacturers' factories). The Rules then are essentially a prohibition against subcontracting both in their purpose and effect.

Compliance with the Rules effectively preserves the longshoremen's traditional work. No displacement of that work can occur if the longshoremen's employers retain their containers at the piers. As the court below concluded, "[i]t is difficult to imagine a more forceful demonstration of control." (Pet. App. 57a).

The Board argues that the longshoremen's employers have "no right to award to longshoremen the stuffing and stripping work performed by these consolidators and truckers." (PB 45). In the Board's view, assignment of this work is made by the shippers who route their cargo to off-pier truckers and consolidators. (PB 47; *see also*, TMTA Brief 64-66; NVOCCS Brief 11; Construction Associations Brief 17; Houff Brief 23). The defect in the Board's reasoning stems from its imprecise definition of the work involved. Inland stuffing and stripping is not the work in controversy. See, pp. 27-33, *supra*. Contrary to the Board's contention (PB 40), the longshoremen do not claim this off-pier work. Inland employees may continue to stuff and strip their employers' trucks and other equipment at their off-pier work sites as they have historically. Thus, if an off-pier company, at a shipper's request, loaded the shipper's cargo into a container owned by the off-pier trucker or consolidator, the Rules would not interdict that shipment. However, all of the containers involved in this case are owned or leased by the steamship carriers. (Pet. App. 57a n.191).[37]

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[37] The longshoremen do not claim the right to stuff and strip containers that are not the property of their employers. In an early case in the Port of New York, NYSA objected to ILA's claim that cargo in containers owned by an off-pier consolidator had to be handled by longshoremen at the piers. *New York Shipping Ass'n* v. *International Longshoremen's Ass'n, Local 791*, 41 Lab. Arb. 809 (Turkus, Arb.), *enf'd*, 54 L.R.R.M. 2680 (Sup. Ct. N. Y. Co. 1963). The Arbitrator adopted the principle, which is now part of the industry's labor relations code, that containers owned by other than the longshoremen's employers "are to be moved without restriction or stripping on the pier". *Id.*, 41 Lab. Arb. at 811.

These carrier containers are the embodiment of pierside cargo handling work traditionally performed by the longshoremen. Their objection has always been limited to the displacement of this work by their employers' release off-pier of these carrier containers.

The Board does not dispute the carriers' right to refuse off-pier access to their containers.[38] It argues instead that this right is transmuted, in some unexplained fashion, by the shipper's contract of transportation with an off-pier company. (*See also,* Construction Associations Brief 17; NVOCCS Brief 11; TMTA Brief 56). However, this off-pier contract does not entitle the shipper to orchestrate the deployment of the property of the steamship carrier who is not a party thereto. Similarly, the Rules on Containers,

[38] The Board obliquely refers to *Consolidated Express, Inc.* v. *New York Shipping Ass'n,* 452 F.Supp. 1024 (D.N.J. 1977), *aff'd in part and rev'd in part,* 602 F.2d 494 (3d Cir. 1979), *petitions for cert. pending,* 48 U.S.L.W. 3001 (U.S. filed June 22, 1979) (Nos. 78-1902, 78-1905 and 79-221) and to *Sea-Land Service Inc., Proposed Rules on Containers,* F.M.C. Docket Nos. 73-17 and 74-40 (June 14, 1978), *appeal pending sub nom. Council of North Atlantic Shipping Associations* v. *FMC,* No. 78-1776 (D.C. Cir. filed Aug. 9, 1978). The Board suggests that these cases *might* affect the steamship carriers' right to withhold off-pier access to their containers. (PB 46 n.31). However, the Board itself conceded in its brief *amicus curiae* to this Court in Nos. 78-1902, 78-1905 and 79-221 that the predicate for these cases "is the Board's 1975 determination [in *Conex*] that the Rules and their implementation constituted an unfair labor practice", *id.* at 5—the very issue to be adjudicated in this case. Consequently, the determination of the labor law issue in this case cannot depend upon these other antitrust and shipping law adjudications. If the Rules are upheld as a lawful work preservation device in this case, these other decisions would lose their vitality since the doctrine of labor exemption would protect the Rules from challenge under federal antitrust and shipping laws. *FMC* v. *Pacific Maritime Ass'n,* 435 U.S. 40 (1978); *Amalgamated Meat Cutters* v. *Jewel Tea Co.,* 381 U.S. 676 (1965); *Granddad Bread; ICTC; Suburban Beverages, Inc.* v. *Pabst Brewing Co.,* 462 F.Supp. 1301 (E.D. Wisc. 1978).

contrary to the Board's misconception, do not interfere with this off-pier contract. (PB 48-49). The Rules do not deprive any shipper of the services provided by local trucking and consolidation companies, including consolidation of small shipments, truck delivery and pick up, preparation of transportation documents, routing and tracing of shipments, settlement of claims, solicitation of freight, etc. (PB 7). Off-pier employees retain any cargo handling work relating to these off-pier transport services.

The Rules only affect the contractual relationship between shippers or off-pier companies and steamship carriers in connection with the carriers' ocean transport services. The only limitation imposed is the inability of any shipper or off-pier company to acquire traditional longshore work by gaining off-pier access to steamship carrier containers. The carriers have the obligation to accept cargo for transport. However, they also have the right to control the use of their property and the performance of their services "in a manner and to the extent compatible with their labor agreements and with both the carriers' and the union's rights and duties under federal labor law." *Burlington Truck Lines, Inc.* v. *United States,* 371 U.S. 156, 177 (1962) (*concurring opinion*).

II

The longshoremen's work rights have never been abandoned.

Houff raises the unfounded contention that ILA waived or abandoned its members' right to unload shortstopped containers at the piers. (Houff Brief 27-34). Houff is a lone voice crying in the wilderness. Both the Court of Appeals in this case and the Second Circuit in *Conex* expressly rejected any abandonment theory. *Compare* Pet. App. 51a-53a n.178 *with Conex,* 537 F.2d at 712.

Moreover, Houff's argument finds no support in the Board's *Associated Transport* decision in this case—the very decision it purports to defend. Indeed, the Board candidly advised the Court of Appeals that "we agree, that the Board here did not rely upon ILA's having abandoned that work as an express alternate ground for finding an (8)e violation." Brief for Respondent NLRB at 30 n.19, *International Longshoremen's Ass'n* v. *NLRB*, Nos. 77-1735 & 77-1758 (D.C. Cir. 1979).

The fatal defect in Houff's argument is that it seeks to equate an FSL container with a shortstopped container. They are separate and distinct commodities that have never been treated the same. The FSL exemption was historically applicable only if the container was stripped at the consignee's facility by its employees. If it were shortstopped and handled at a local off-pier warehouse or trucking facility, it lost its FSL identity and became a consolidated container to be stripped at the piers. (Pet. App. 11a-12a, 124a-125a; A. 40-41, 102-103, 122, 165-166, 180-182, 222-223, 231-234).[39]

Houff mainly relies upon the absence of any express language in the 1968 or 1971 Rules relating to shortstopped containers. (Houff Brief 28). A labor agreement, however, is not "an ordinary contract." *Wiley* v. *Livingston*, 376 U.S. 543 (1964). Its silence does not amount to a contractual waiver since "it is an established and fundamental principle of labor law, that labor-management contracts are not to be read with narrow precision." *Local 742, Carpenters*, 444 F.2d at 902.

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[39] Prior to the 1973 Dublin Rules, every FSL container destined for shortstopping at a warehouse was unloaded at the piers by the longshoremen. *See*, p. 15, *supra*. This fact completely dispels Houff's claim of an unqualified FSL exemption prior to 1973. A shortstopped full shipper's load is a shortstopped full shipper's load whether it is stripped at a warehouse or at a trucking station. So long as it was to be shortstopped, the dockworkers never relinquished their right to unload its contents at the piers.

It is undisputed that there was no specific contractual waiver in this case.[40] Indeed, labor and management in the longshore industry unvaryingly interpreted the Rules from their inception to prohibit shortstopping of FSL containers. *See*, pp. 15-16, *supra*. Houff's claim of abandonment then runs afoul of the longstanding canon of contract construction that the uniform, practical and contemporaneous construction of a labor contract by the signatories thereto is dispositive in determining its intent and meaning. *NLRB* v. *Universal Services, Inc.*, 467 F.2d 579, 585 (9th Cir. 1972); *Pekar* v. *Local 181, United Brewery Wkrs.*, 311 F.2d 628, 636 (6th Cir. 1962), *cert. denied*, 373 U.S. 912 (1963); *Lewis* v. *Hixson*, 174 F.Supp. 241, 248 (W.D. Ark. 1959); *Amalgamated Local 877, United Automobile, Aircraft and Agricultural Implement Wkrs.* v. *United Aircraft Corp.*, 120 F.Supp. 186, 187 (D. Conn. 1952).

No case has ever adopted Houff's alleged rule of abandonment. The imprecise words of a labor contract, entered into when technology is in its infancy, should not be construed as an irrevocable, perpetual waiver of employees' rights to their traditional work, particularly when there is no conscious, express abandonment, nor any *quid pro quo* therefor,[41] and when there is a contrary contemporaneous

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[40] *International Longshoremen's and Warehousemen's Union, Local 13 (California Cartage Co.)*, 208 N.L.R.B. 994 (1974), *enf'd mem. sub nom. Pacific Maritime Ass'n* v. *NLRB*, 515 F.2d 1018 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 942 (1976), involving the longshore industry on the West Coast, is inapposite since there, in contrast to this case, the disputed work of preparing cargo for ocean shipment had been expressly bargained away by contract, and had for many years, even prior to containerization, been performed by teamsters and other non-longshoremen, both on-pier and off-pier, with the West Coast longshoremen's consent. *See, Ross, Waterfront Labor Response to Technological Change: A Tale of Two Unions*, 21 Lab. L. J. 397 (1970).

[41] Houff erroneously implies that the small royalty prescribed in the Rules constituted the consideration for the longshoremen's

(footnote continued on following page)

interpretation by those administering the labor contract, both verbally and in practice. Employees' work rights should not be so facilely discarded.[42]

III

The Rules on Containers represent a reasoned collectively bargained accommodation.

The prevalent theme in the briefs filed by the Board and its supporters centers upon the economic effects of the Rules on Containers. (PB 49-54; *see also,* Construction Associations Brief 18-20; ATA Brief 7-8; NVOCCS Brief 2-3). They implicitly suggest that the validity of a work preservation agreement under LMRA §§ 8(b)(4) and 8(e) depends upon the nature and extent of its economic impact.[43]. This Court, however, has decisively rejected the

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(footnote continued from preceding page)

contractual surrender of their work. (Houff Brief at 27-28). A royalty, however, connotes a retention—not an abandonment—of all right, title and interest in the work in dispute. More importantly, the royalty in this case was not intended to be applicable to shortstopped containers, but only FSL containers that were delivered intact to the consignees. If a container was to be shortstopped, then it should have been stripped at the piers under the Rules. Thus, the determinative factor was not the royalty, but whether or not the container went directly to the beneficial owner. (Pet. App. 52a n.178).

[42] Any such postulate of abandonment would improperly conflict with the employees' rights not only to preserve, but also to recapture lost work. (Pet. App. 52a n.178). *See,* cases cited note 30, *supra.*

[43] The Board prefaces its argument (PB 49-50) by admitting that the "economic personality of the industry" element of the *National Woodwork* surrounding circumstances test is designed solely to detect the union's purpose underlying the work preservation agreement in controversy. 386 U.S. at 644-645. The Board acknowledges that *Pipefitters* did not alter this basic purpose analysis. (PB 49-50). However, the Board then spuriously converts this purpose test into an economic effect or impact test (PB 52), premised apparently upon the observation in *Pipefitters* that the

(footnote continued on following page)

notion that a lawful work preservation agreement should be invalidated because of "economic and technological factors." *National Woodwork,* 386 U.S. at 644; *cf., NLRB* v. *Fruit and Vegetable Packers, Local 760,* 377 U.S. 58, 72 (1964).[44]

The Board's putative economic impact test is not only legally impermissible, but also factually unsound. Contrary to the Board's groundless contention, the Rules on Containers do not "preclude steamship lines from doing business with consolidators and truckers and effectively deprive shippers of their services." (PB 49). The fundamental error in the Board's contention is highlighted in its own brief. It admits that prior to containerization "shippers utilized the services of" consolidators and truckers "to handle their transportation needs" and that these "middlemen" combined the shippers' cargoes and trucked them *"to the pier for handling by longshoremen."* (PB 34; *emphasis added*). The Rules on Containers simply maintain these traditional practices. There is no sound explanation advanced by the Board why consolidators and truckers cannot exist today under these same conditions.

The Rules on Containers do *not* deprive any shipper of the services provided by consolidators and truckers. *See,*

(footnote continued from preceding page)

Board in that case discussed "the economic context in which the dispute arose", including the potential effect of the product boycott. 429 U.S. at 524, n. 12. However, this Court did not sanction the Board's economic analysis. Indeed, if the economic effect of a boycott were a decisive factor, the dissent in *National Woodwork* would then prevail as the controlling law. 386 U.S. at 660-661. However, this Court in *Pipefitters* expressly reaffirmed the principles adopted by the majority in *National Woodwork.* 429 U.S. at 511.

[44] The Board's economic impact theory is refuted by its own acknowledgment that the challenged labor contract in *National Woodwork* was approved even though its invalidation "would have been more economical." (PB 38).

pp. 37-39, *supra*. Nor do they require the steamship carriers to deny access to containers, or to refuse to rent containers to these off-pier companies. (PB 51). Steamship carriers are not engaged in the container rental business. They transport cargo by sea. In connection with their transportation services, they utilize containers. The Rules in issue in this case only require the steamship carriers to make their containers available to the local consolidation companies, with LTL cargo, at the piers. If local port consolidators prefer to do their own loading and unloading, they need only acquire their own containers.[45] Similarly, any trucker who finds it more economical to haul FSL cargo in its own trucks can adhere to the historical practice of arranging to have the steamship carrier's container stripped at the pier. *See,* p. 17, *supra.*[46]

The thrust of the Board's economic impact theory is that the Rules, or any other work preservation agreement, must be invalidated whenever it does not meet the Board's own private economic calculus. The Board's argument irreconcilably conflicts with the fundamental tenet of national labor policy favoring resolution of the conflicting interests of technological innovation and job security through collective bargaining—not by governmental second guessing. Pet. App. 5a; *National Woodwork,* 386 U.S. at 640-644; *Fibreboard Paper Products Corp.* v. *NLRB,* 379 U.S. 203 (1964); *Conex,* 537 F.2d at 714 (*Feinberg, J., dissenting*).

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[45] As previously noted, the longshoremen limit their work preservation objective to containers that are owned or leased by their employers. No claim is made to stuff or strip any container that is the property of an off-pier company. *See,* note 37, *supra.*

[46] The Board makes no effort in its brief to reconcile a trucker's shortstopping with its perceived ideal of intact containerized transport from origin to destination. (PB 36, 53).

In this case, NYSA, CONASA, HRSA, STAB and their shipping employer members would have preferred unrestricted containerization. Conversely, ILA protested the implementation of this new technology which drastically displaced the jobs of its members. The Rules represent a collectively bargained compromise between these conflicting interests. The ILA bargained away the major part—more than 80%—of its historic right to handle *all* ocean going cargo engendering "a high rate of productivity growth" in the longshore industry consistent with the recommended goals prescribed in § 103(a) of the National Productivity and Quality of Working Life Act, 1975, 15 U.S.C. § 2403(a) (1976). However, ILA did not consent to a displacement of its members' traditional work of loading and unloading their employers' containers with local LTL and consolidated cargo from within the limited 50 mile geographic port area. This cargo could feasibly and economically be handled in preparation for ocean transport at the piers.

> These Rules represent a reasoned response to the difficult problem of technological innovation and are an exemplar of the self-government contemplated by Congress when it left the bulk of industrial problems to be resolved in the private sector. The Rules seek neither to stymie technological innovation nor to introduce manual labor in situations where the work otherwise would be handled by more efficient mechanized means; rather, the Rules intend to secure for ILA labor any stripping and stuffing of containers that is to be performed within 50 miles of port by other than the employees of the cargo's beneficial owner. Courts and the NLRB must take great care not to disturb the parties' reasoned attempts at self-governance unless those attempts contravene the law.

Pet. App. 60a-61a; footnotes omitted.

The Board proposes to upset the compromise embodied in the Rules simply because it does not suit the Board's economic philosophy. It achieves this improper result by arbitrarily defining the work in controversy in terms of the work practices it chooses to promote. The Board's approach, if left undisturbed, stands as a stark warning to any union faced with the demand to permit innovation, that it does so at its peril. No employer or union sitting down to bargain collectively on the subject of work preservation and job security could possibly know in advance whether the resulting labor agreement would prevail if the Board may have unbridled discretion to undo the bargain by the imperfect and purely subjective device of defining the work in controversy "in terms of the innovation." (Pet. App. 47a). Different and arbitrary results would prevail from industry to industry, from employer to employer, from work function to work function, from case to case. Forward looking collective compromises would be thwarted. Instead, there would be a reversion to economic warfare as labor unions would become "obdurate when asked to compromise some degree of job security for the sake of efficiency if that compromise might later be cast aside." (Pet. App. 33a).

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed and the Rules on Containers upheld as lawful work preservation provisions.

Dated: New York, New York
April 4, 1980

Respectfully submitted,

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OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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International Longshoremen's Association, AFL-CIO (Associated Transport, Inc.), 231 N.L.R.B. No. 64 (1977), reversed and vacated Nos. 77-1735 and 77-1758 (D.C. Cir. September 25, 1979) (unreported) 16, 24

International Longshoremen's Association (Consolidated Express, Inc.), 221 N.L.R.B. 956 (1975) 13, 24, 26, 27, 35

International Longshoremen's Association, AFL-CIO (Dolphin Forwarding, Inc. and San Juan Freight Forwarders, Inc.) 236 N.L.R.B. No. 42 (1978), reversed and vacated No. 78-1510 (D.C. Cir. September 25, 1979) (unreported) 17

International Longshoremen's Association v. *NLRB,* 537 F.2d 706 (2d Cir. 1976), *cert. denied,* 429 US 1041 (1977) 14, 22, 37

Leather's Best v. *S. S. Mormaclynx,* 451 F.2d 800 (2d Cir. 1971) 34

Local 24 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. *Oliver,* 358 US 283 (1959) 48

Local No. 742, United Brotherhood of Carpenters and Joiners v. *NLRB,* 444 F.2d 895 (D.C. Cir. 1971), *cert. denied, sub nom. J. L. Simmons Co., Inc.* v. *Local 742, United Brotherhood of Carpenters and Joiners,* 404 US 986 (1971) 26

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National Woodwork Manufacturers Association v. *NLRB,* 386 US 612 (1967) .....*passim*

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NLRB v. *American National Insurance Company,* 343 US 395 (1952) 47

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NLRB v. *Bell Aerospace Co.,* 416 US 267 (1974) ... 49

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NLRB v. *Brown,* 380 US 278 (1965) 24

NLRB v. *Burns International Security Services, Inc.,* 406 US 272 (1972) 47

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NLRB v. *Sands Manufacturing Company,* 306 US 332 (1939) 50

NLRB v. *The Fruit and Vegetable Packers and Warehousemen Local* 760, 377 US 58 (1964) .. 39

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Northeast Marine Terminal Company Inc. v. *Caputo*, 432 US 249 (1977) 4, 19, 33, 34

Pacific Maritime Association v. *NLRB*, 515 F.2d 1018 (D.C. Cir. 1975), *cert. denied*, 424 US 942 (1976) 20, 44

P.C. Pfeiffer Co. v. *Ford*, —— US ——, 62 L.Ed. 2d 225 (1979) 3, 4, 19

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SEC v. *Chenery Corporation*, 318 US 80 (1943) 24

Sheet Metal Workers International Association, Local 223 v. *NLRB*, 498 F.2d 687 (D.C. Cir. 1974) 26, 45

Sheet Metal Workers Local No. 98 v. *NLRB*, 433 F.2d 1189 (D.C. Cir. 1970) 45

Teamsters Local Union 282, IBET (D. Fortunato, Inc.), 197 N.L.R.B. 124 (1972) 45

United Assocaition of Pipefitters, Local 455, 167 N.L.R.B. 602 (1967) 45

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29 USC §158(b)(4)(B) [Labor-Management Relations Act, § 8(b)(4)(B)] 2

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Dunlop, "The Social Utility of Collective Bargaining" in *Challenges To Collective Bargaining* (Prentice-Hall Englewood Cliffs, NJ 1967) pp. 168-180 48

Morris, "Reflections On The Role Of The NLRB And The Courts In The Collective Bargaining Process —A Fresh Look At Conventional Wisdom And Unconventional Remedies", in *Developing Labor Law*, edited by Frances Penn and Laurel Black, American Bar Association and the Section of Labor Relations Law 1977, pp. 9-17 48

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Ross, *Waterfront Labor Response To Technological Change: A Tale of Two Unions,* 21 Lab. L.J. 397 (1970) 4, 5, 44, 47

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Rule 41(2), Supreme Court Rules 1

Miscellaneous:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

Introduction

Respondent International Longshoremen's Association, AFL-CIO ("ILA") submits this brief, pursuant to Rules 40(3) and 41(2) of the Rules of this Court in response to the briefs filed by Petitioner National Labor Relations Board and the parties and *amici curiae* supporting it.*

* References in this brief designated "Pet. App." are to the pages of the appendix to the Board's petition for certiorari; references designated "A." are to the pages of the separately bound appendix; and, references designated "PB" are to the pages of the Board's brief.

Questions Presented

1. Whether collectively bargained work rules designed to preserve and protect for longshoremen their historic and traditional work of loading and unloading ocean-going cargo at maritime terminals from equipment belonging to the steamship employers were primary so as to be lawful under the doctrine of work preservation enunciated by this Court in *National Woodwork Manufacturers Association* v. *NLRB*, 386 US 612 (1967)?

2. Whether, under national policy on work preservation, the NLRB erred when it found a violation of Labor Management Relations Act §§ 8(b)(4)(B) and 8(e) on the basis of its definition of "the precise work in controversy" as the work generated by technological innovation rather than the historic work of the employees threatened and/or displaced by the technological change, i.e., that of the employees of consolidators and truckers rather than that of longshoremen?

Statement of the Case

The dispute herein is whether the Rules on Containers violate the hot-cargo and secondary boycott provisions of the Labor-Management Relations Act. The Rules are collectively bargained provisions whereby vessel owners are enabled to make full use of intermodal maritime containers while preserving to their longshore employees that part of the traditional work not eliminated by the new technology. In essence, they permit containers which perform a genuine intermodal transportation function to cross the docks intact. But they prevent the diversion of still necessary longshore work to nearby inland loading docks.

Respondent ILA maintains that seen in the light of their historical evolution, their subject, and their purpose, the Rules are entirely lawful. Far from acquiring work, they permit the employer to eliminate 80% of longshore cargo handling. Far from being secondary, they apply only to equipment owned and controlled by ILA employers. Their purpose and effect is to preserve the very essence of traditional longshore work, the handling of maritime cargo at the pier.

The Effect of Containerization on Traditional Longshore Work

The Rules on Containers are a response to the impact of technology on the longshore industry. Historically, the handling of ocean cargo has been the work of longshoremen employed at the piers by vessel carriers and/or stevedores. This included not only the piece-by-piece receipt and delivery of the goods but also sorting, checking, storage, palletizing, repair, maintenance of the cargo, and virtually all of waterfront terminal functions.* Containerization drastically reduced longshore work opportunities.

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* The Board's certification of the longshore unit in the Port of New York bears out the broad spectrum of dockside work.

> All longshore employees engaged *in work pertaining to the* rigging of ships, coaling of same, *loading and unloading of cargoes* including mail, ships' stores and baggage, handling lines in connection with the docking and undocking of ships including hatch bosses, cargo repairmen, checkers, clerks and timekeepers, and their assistants, including head receiving and delivery clerks; general maintenance, mechanical and miscellaneous workers; horse and cattle fitters, grain ceilers and marine carpenters, in the Port of Greater New York and vicinity. . . . *Matter of New York Shipping Association*, 116 NLRB 1183, 1188 (1956).
> (emphasis supplied)

This Court has recently recognized the practical reality that longshore work includes virtually all functions within the maritime terminal. *P.C. Pfeiffer Co.* v. *Ford*, ——*US*——, 62 L.Ed.2d 225 (No. 78-425, Nov. 27, 1979).

Containers are large, reusable, metal receptacles, some capable of carrying 30,000 pounds of cargo, which can be moved on or off an ocean vessel intact and which can carry cargo of virtually any kind or configuration. Pet. App. 4a-5a; A.193. Container ships, which first appeared in 1957, are specially designed and constructed to carry containers. A.117, 212.

Vessel carriers understandably welcomed containerization not only in its labor-saving aspects but also because of the increased productivity it affords their ships which no longer need lay over in port for piecemeal unloading and loading between runs. *Northeast Marine Terminal Co.* v. *Caputo,* 432 US 249, 269-270 (1977). Ross, *Waterfront Labor Response to Technological Change*: *A Tale of Two Unions,* 21 Lab. L.J. 397, 399-400 (1970); A.211-212, 464, 603, 627-628. On the other hand, longshoremen from the first recognized containerization as a serious threat to their work opportunities, a fear proved justified through the years.* A.118-123, 604. *Ross, supra.* Note 4 at 400-401; 405, 418-419.

Containerized vessels are not loaded piece by piece, or break-bulk. However, the work of loading or unloading still remains. Loose cargo must still be handled at some point. The modular holds of container ships—the container—permits this to be accomplished at a place other than on board the vessel. *Pfeiffer, supra;* Note 1, 62 L. Ed. 2d at 235-236. *Caputo, supra* at 269-270, 276.

The impact of containerization took away from the ILA worker much of the work previously available. The productivity factor for handling cargo rose by two thousand (2,000%) percent over the break-bulk method. This increased productivity perforce took away the work of longshoremen. Labor requirements on the docks and manhours of ILA employment were drastically reduced.* Pet. App. 5a, 121a; A.627-630; A.150.

* In the period September 30, 1958 to September 30, 1976, despite the fact that tonnage passing through the port had doubled, statistics in the Port of New York showed a loss of 19,365 longshore jobs and/or 23,140,549 hours of work. A.464, 603, 627-628.

The Rules on Containers

Pursuant to Congress' policy of leaving the resolution of problems like those engendered by technology to the collective bargaining process, Petitioner ILA and representatives of employer groups have evolved the work rules which give rise to the present case. The history has been one of heated labor strife. At first the ILA refused to handle any containers. The decade 1958-1968 was marked with strikes and work stoppages as the parties unsuccessfully tried tentative solutions acceptable to both sides. After a strike which lasted 57 days in New York and 100 days in other ports following expiration of a Taft-Hartley injunction, a Presidential Board of Inquiry established pursuant to the national emergency provisions of the Taft-Hartley Act reported that one of the two issues separating the parties was "the impact or consequences of containerization or mechanization." With the aid of David Cole, a mediator appointed by the President of the United States, an agreement of lasting duration was reached on January 12, 1969 and incorporated in the 1968-1971 collective bargaining agreement. Pet. App. 5a-18a, 121a-122a. A.118-123, 604-621.

The underlying dynamic of the compromise was a relinquishment, not an acquisition of work by the ILA. In return for various considerations, the union significantly

* "Labor productivity is astonishingly increased by containerization. * * * These savings, it should be noted, come about because of a reduction in man-hours—a fact of menacing importance when we turn to collective bargaining agreement on the issue." In Ross, *Waterfront Labor Response to Technological Change*: *A Tale of Two Unions, supra,* at 400.

relaxed its insistence that all containers be stuffed (loaded) and stripped (unloaded) by longshoremen. This concession was premised upon the employers adherence to a set of provisions known as the "Rules on Containers." 62a-66a, 141a-148a. A.235-286.

The basic compromise underlying and embodied in the Rules is that, if there is to be any handling of ocean cargo by employees within the local port area (other than employees of the beneficial owner of the cargo), that work should continue to be performed at the piers by ILA labor, as it has been historically. Pet. App. 14a-16a, 124a; A.606. The employers' associations agreed that this small portion of the ILA's traditional longshore work jurisdiction should be preserved by their ocean carrier members, who own or lease the containers and who alone can control how, where and by whom they shall be loaded and unloaded.

At the same time, the ILA contractually agreed that the loading and unloading of cargo in full-shipper-load (FSL) containers,* which constitute the overwhelming bulk of container movements, could be performed by the shipper's or manufacturer's employees. A.612. Similarly, consolidated ("LTL") containers** might also be handled intact *provided* that the actual consolidation took place more than fifty miles from the center of the port. Pet. App. 9a-10a; A.121-122, 235-242. On these containers, the ocean carriers paid a symbolic royalty on cargo tonnage as a partial substitute for the lost manhour contributions occasioned by the reduction in manhours resulting from containerization.

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* A full shipper's load may be defined as a container full of goods destined to a single consignee, who is the beneficial owner of the goods within and whose own employees perform the loading or unloading of the container. Pet. App. 9a, 120a, 140a. A.176.

** Consolidated containers are those holding goods of several shippers or consignees and loaded by shipper/receiver service organizations, known as "consolidators". Pet. App. 9a, 120a, 140a.

Pet. App. 15a; A.606-607. That royalty stands as a recognition of the ILA's historic entitlement and claim to the handling of all cargo within the containers.

The Rules preserved a small part of the longshoremen's historic work. On the other hand, the shipping industry received the right to move most containers without stuffing or stripping by ILA longshoremen. Full-shipper-loads as well as all containers coming from or going to points fifty or more miles from the port were excluded from the stuffing and stripping requirements. These constituted approximately 80 per cent of the containers. By this collectively bargained compromise, the ILA removed the major obstacle to progress. Containerization could flourish, and the shipping industry has enjoyed a monumental increase in longshore productivity. Pet. App. 9a-10a; 121a-122a; A.150, 213a-214a, 612.

Development of Off-Pier Consolidators

At the inception of containerization, the steamship carriers had virtually complete control over the work of loading and unloading their containers. This work could be, was and continues to be done by the carriers' ILA labor at the piers. A.628-629. However, in order to reduce their direct ILA labor costs, the automated steamship carriers since the beginning have encouraged and induced the performance of some of this traditional ILA pier work at off-pier facilities. This was accomplished by making their containers available off-pier and by granting preferential, reduced shipping rates on containerized cargo crossing the docks intact. A.515-518, 631-634. The consolidation industry was thus created and actively nurtured by the steamship carriers.

The consolidation business generated by containerization naturally gravitated to the already established industry of

freight forwarding.* Freight forwarders were companies which had previously serviced shippers of goods by arranging for the routing and passage of cargo. Prior to containerization freight forwarders arranged to have goods brought to or picked up from the piers, where they were handled break-bulk by longshoremen in the traditional method. A.209-210. Containerization added the significant factor that now the equivalent of the hold of the ship could be brought to the freight forwarders' premises. Until this was possible, freight forwarders/consolidators, like truckers, were but a link in the chain of transportation which always began or ended with the longshoremen's handling of the goods. When consolidators began to have their own employees stuff and strip containers, the work longshoremen had always performed was displaced. See, 20a-21a; A.526-528, 545.

Since, under the favorable tariff rates procured for consolidators by the shipping companies, the costs—and thus the LTL rates—applicable off-pier were less than those charged on-pier, the inevitable result was the siphoning of LTL cargo from the piers by the consolidators. In effect, ILA automated employers secured loading and unloading of the cargo carrying portions of their vessels by non-ILA labor at cheaper rates. The ILA could correctly perceive this as thinly disguised sub-contracting. A.608-610, 613-614, 615-617, 631-635.

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* Indeed, it has been noted that, due to the continued opposition of the Interstate Commerce Commission, freight forwarders were struggling at the advent of containerization and had to find new ways to survive, including the loading and unloading of containers. Ullman, *The Role of the American Ocean Freight Forwarder in Intermodal Containerized Transportation,* 2 J. Mar. L. & Com. 625 (1971). Thus, it was the consolidators who reached out and acquired new work, which previously had been performed by longshoremen.

Testing of The Rules

The Rules had been redefined and codified in 1968-69 with the aid of Presidential Mediator David Cole. Pet. App. 6a-7a. They were soon subjected to administrative and judicial scrutiny. International Container Transport Corporation ("ICTC") filed unfair labor practice charges with the Newark Region of the NLRB in mid-1969, alleging that the Rules violated Sections 8(e) and 8(b)(4)(B) of the Act. The Regional Director investigated and dismissed the charges. He upheld the validity of the Rules on the grounds that they were intended to protect stuffing and stripping work traditionally performed by longshoremen. His determination was sustained by the Board's General Counsel. A.614-615, 621.

ICTC then brought an action alleging that the Rules violated the anti-trust laws. Consistent with the NLRB's conclusion, the Court of Appeals for the Second Circuit upheld the lawfulness of the Rules, finding that the provisions, bargained for at arms-length:

> have as their object to the preservation of work traditionally performed by longshoremen covered by the the agreement. *Intercontinental Container Transport Corporation* v. *New York Shipping Association, Inc. and International Longshoremen's Association,* 426 F.2d 884, 887 (2d Cir. 1970). Pet. App. 39a-40a; A.614, 621.

Further Evolution of The Rules

The 1968 Rules did not diminish the siphoning of work away from the piers to the consolidators. To retain longshore work, the Rules had provided that any consolidated containers originating within a 50-mile radius of the port must be loaded or unloaded by ILA labor at the pier. A.246-248; 270-286. As the Rules evolved, this provision was a constant source of discord. Throughout the period

of the 1968-1971 contract, it became apparent that the automated carriers were failing to abide by the 50-mile rule. Pet. App. at 18a, fn. 56, A.613-618. Non-exempt containers were clandestinely returning over the piers*. This resulted in a resurgence of labor strife. A coast-wide strike took place from October 1, 1971 until enjoined under the Taft-Hartley Act at the end of November. In May, 1972 the ILA served notice that, unless violations of the Rules ceased, the union would invoke its right under the contract to abrogate them in their entirety and reassert its jurisdiction to stuff and strip *all* containers. Again in 1973 the industry was on the point of strike when the employers agreed to certain enforcement provisions known as the Dublin Supplement.** Pet. App. 17a-18a; A.264-269, 616-618.

By the Supplement, the employers agreed to prevent further evasion of the Rules by the sole remaining alternative—not to release their containers to known consolidators with facilities within 50-miles of the port. The Dublin Supplement was not a further set of Rules. It was only additional provisions for *enforcement* and *implementation*

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* This was accomplished by various subterfuges. Documentation was altered to make it appear that the containers had already been stuffed or stripped by longshoremen. Bills of lading were falsified to disguise consolidated loads as full-shipper-loads or as originating outside the 50-mile limit. Even bribery of key personnel was employed to avoid enforcement of the Rules. Pet. App. 21a; A.540-543, 589, 590, 591, 592, 593, 594, 631-635.

** The adoption of the Dublin Supplement did not put an end to labor unrest. In late March 1975 the ILA reopened the Rules contending that the carriers were not abiding by their contractual commitments. On April 28, 1975 the ILA invoked the renegotiation clause by suspending the Rules and began stripping all containers in all North Atlantic ports with the exception of full-shipper-loads. The present 1977 collective bargaining agreement was reached only after a major strike against container operators by longshoremen from Maine to Texas which lasted for more than two months in 1977. A.620-621.

of the Rules to effectuate their original intent, which circumstances had shown to be frustrated by the major automated carriers. The underlying meaning and purpose of the Rules, which both the NLRB and the Second Circuit had found to be to preserve and protect the work of longshoremen, remained the same. The Rules in their present development now form part of every ILA contract in 26 states in the eastern half of the nation, including the Ports of Baltimore and Hampton Roads.

Shortstopping

The premise of the Rules is that traditionally, longshoremen loaded *all* cargo onto and off of their employers' vessels. Pet. App. 14a, 48a-49a, 120a-121a, 139a-140a; A.109-114, 120, 134-135, 158, 168, 210-211, 229, 600-601. The Rules bargain away an express portion of that work, retaining the remainder to longshoremen. The Rules give up the longshoremen's right to stuff and strip *only* (1) FSL containers, wherever the owners' location, and (2) those LTL containers originating from or destined to a point more than 50 miles from the center of the port. The work of handling cargo in any other container is not relinquished. If the ocean carrier releases a container without pierside stripping or stuffing by its ILA employees and that container is stripped within the 50 mile radius of the port by other than its beneficial owner's employees, this constitutes a violation of the Rules. Liquidated damages, which progressively rose to $1,000.00 per container, are imposed for such violations.

The practice of "shortstopping" involves containers originally intended to be FSL. Truckers, for reasons of their own, received such containers at the piers, moved them to their local facilities within 50 miles of the center of the port, and unbeknownst to the ocean carriers and the ILA, proceeded to strip them and reload their contents into their own vehicles. Pet. App. 19a-20a, 22a-24a, incl. fns. 72 & 77;

A.28, 32-33, 35, 44, 53, 63, 66, 69, 73-74, 146, 185-186, 198-199, 302; Pet. App. 128a-129a, incl. fns. 18-22.* This violates the Rules in that, when a container is shortstopped within the 50 mile radius, it no longer falls within the two categories as to which—and *only* as to which—the ILA had agreed to forego its right to stuff and strip. A shortstop container which leaves the pier ostensibly as FSL loses that character when it is not delivered intact to the premises of the beneficial consignee where the goods would be handled by his own employees. A.215-217, 222, 225, 231-234, 421-439, 441, 442, 453-463.

In the earliest versions, the Rules made no mention of shortstopping. This was both because the practice had not yet become widespread and because such mention would be superfluous, since only FSL containers moving directly to the consignee were exempt from the ILA's continuing right to stuff and strip. Pet. App. 11a-12a, 124a-126a; A.40-41, 102-103, 122, 165-166, 180-182, 222-223, 231-234, 453-463. The truckers' practice of shortstopping later lead to express provisions in the 1974 CONASA/ILA contract. A.256, 280. But such articulation was only to clarify what

* Among the reasons advanced by the truckers were compliance with state and local safety regulations. Pet. App. 165a, A.184-186; Pet. B. 16 and the truckers' own economic benefit Pet. App. 128a-129a, A.68-70, 185-186, 192-193, 205-206; Pet. B. 16. The record points out the inherent weaknesses of the truckers' position. If, for reasons of safety, convenience or economy, the truckers did not wish a FSL container to proceed to its destination intact, it is undisputed that the redistribution of containerized cargo could as readily have taken place at the piers as at the trucking stations. Pet. App. at A.21, 89-90. Moreover, if safety was a factor, the truckers in many instances were in violation of safety and weight regulations even in the course of transporting the containers over city streets and state roads to their own off-pier facilities A.55, 184-185. Ultimately, the various rationales for shortstopping offer no reason for depriving longshoremen of their work. The desired results could be obtained by complying with the Rules without deceptively labelling as "FSL" containers which the truckers knew would be stripped within a few miles of the pier.

had always been the consistent understanding and practice of all parties concerned.*

Prior Litigation

In reliance on the rulings of the NLRB and the Second Circuit in the *ICTC* cases that the Rules were lawful work preservation, the parties refined them and added the Dublin Supplement. Since 1975 the Board has reversed its position and maintained in a series of cases that the Rules violate the secondary boycott and hot cargo provisions of the National Labor Relations Act.

In 1973 unfair labor practices were filed by two off-pier consolidators, in the Port of New York, Consolidated Express, Inc., and Twin Express, Inc., alleging that the Rules and their enforcement violated §§ 8(e) and 8(b)(4)(ii)(B) of the Act. These charges were tried and rejected by Administrative Law Judge Arnold Ordman, himself a former General Counsel to the Board. Judge Ordman held that the Rules had valid work preservation objectives within the doctrine enunciated by this Court in *National Woodwork Manufacturers Association* v. *N.L.R.B.*, 386 U.S. 612 (1967) and recommended dismissal of the charges.

The Board overruled Judge Ordman. *International Longshoremen's Association (Consolidated Express, Inc.)* 221 N.L.R.B. 956 (1975). But it did not disturb his factual findings. Rather, it (re)defined the "precise work in controversy" to be that traditionally performed by the *con-*

* The record clearly shows that long prior to the adoption of express provisions with respect to shortstopping, the parties to the collective bargaining agreement, through their Container Grievance Committees, recognized that this practice violated the Rules. A.14, 19-20, 91, 106-107, 421-439, 453-463. Moreover, the truckers themselves were fully alerted that shortstopping was in violation of the Rules and subjected the ocean carriers to liquidated damages. A.65, 71-72, 74-75, 87, 207-209.

solidator's employees at their off-pier premises, which the Board held that the ILA was seeking to acquire.

On review, the Second Circuit by a divided panel deferred to the Board's definition of the work in controversy and sustained its decision. *International Longshoremen's Association* v. *N.L.R.B.*, 537 F.2d 706 (2d Cir. 1976), *cert. denied* 429 US 1041 (1977).* Judge Feinberg dissenting, argued that the Board's position was a clear misconception of the holding in *National Woodwork,* which requires the definition of the work in controversy to be the work sought to be preserved, i.e., that of the complaining employees (here the ILA longshoremen), the work preceding—not following—the introduction of the new technology.

During the pendency of the *Conex* case, two cases arose in the Ports of Hampton Roads, Virginia and Baltimore, Maryland, which ultimately gave rise to one of the Board's decisions now before this Court. In one case District Judge Robert H. Merhige, Jr. of the Eastern District of Virginia refused to issue an injunction under § 10(1) of the Act. *Humphrey* v. *International Longshoremen's Association,* 401 F.Supp. 1401 (E.D.Va. 1975), *rev'd* 548 F.2d 494 (4th Cir. 1977). ("*Humphrey I*"). He held that the Board's Regional Director did not have reasonable cause to believe that the Rules on Containers violated the provisions of the Act in that, as a matter of law, the Rules fell under the work preservation exception enunciated in *National Woodwork.* In a second case, District Judge Joseph H. Young of the District of Maryland, on the same set of facts that had been adduced before Judge Merhige, granted a preliminary injunction on the ground that the Rules might violate the Act. *Humphrey* v. *International Longshoremen's Association,* (D.Md. No. Y-75-1395, decided March 25, 1976) (unreported). ("*Humphrey II*").

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* Hereinafter both the Board proceeding and the Second Circuit's enforcement will be referred to as "*Conex*".

On December 20, 1977 a divided panel of the Fourth Circuit issued its decision on the Board's appeal from Judge Merhige's order. The Court reversed, finding that, in the light of the Second Circuit's holding in *Conex,* the Regional Director had reasonable cause to believe the Act was being violated. *Humphrey* v. *International Longshoremen's Association, AFL-CIO,* 548 F.2d 494 (4th Cir. 1977). Circuit Judge J. Braxton Craven, Jr. vigorously dissented, going to the substantive issue and finding that the Rules were work preservation on reasoning similar to that of Judge Feinberg's dissent in *Conex.*

The Proceedings Below

1. Associated Transport

This case arose from parallel incidents of shortstopping by Houff Transfer, Inc. and Associated Transport, Inc. in 1974. In each instance containers belonging to ILA employers and destined to a named consignee were picked up at the piers. The containers, ostensibly FSL, were delivered intact without ILA stripping. The trucker transported the containers not to the consignees but to its own trucking station within 50 miles of the port where it stripped the cargo from each of the containers and reloaded it into several vehicles. A.27-28, Pet. A.23a-24a, 155a-157a.

When the ILA learned of the shortstopping, it complained to the Container Grievance Committee which levied liquidated damages of $1,000.00 for each violation against the ocean carriers involved. Pet. App. 23a-24a, 153a-155a; A.303, 400-406, A.196-197, 401-402. Thereafter, the carriers, having paid the assessments to the STA-ILA Container Royalty Fund, requested indemnification from the truckers. A.305-311, 327, 328. When the truckers refused, the carriers cancelled their Equipment Interchange Agree-

ments and thereafter refused to release containers to them.* A.329, 340, 343-346. A.63-64, 403-405.

It should be pointed out that the Rules do not require, and the ILA did not insist, that the ocean carriers attempt to recoup their assessed damages from the offending truckers. See A.260-261, 284. The $1,000.00 per container assessment is liquidated damages imposed upon one contracting party in an attempt to make whole the other contracting party. The carrier's insistence that the truckers indemnify them for damages was at the carrier's own initiative, as was their subsequent decision to cancel the Equipment Interchange Agreements and refuse to furnish carriers to those offending truckers who declined indemnification.

In May, 1975, Associated Transport, Inc., Houff Transfer, Inc., and Tidewater Motor Truck Association filed charges with the Regional Director of Region 5 of the National Labor Relations Board alleging violations of Section 8(e) of the Act. 29 USC 158(e).

On August 19, 1976, Administrative Law Judge Wagman issued his decision and recommended order. In reliance on the Board's rationale and conclusion in *Conex,* that the employee unit at the off-pier facility was the relevant unit, he concluded that the respondents had violated the Act. On August 12, 1977 the Board, by divided panel, sustained his conclusions. *International Longshoremen's Association, AFL-CIO (Associated Transport, Inc.),* 231 N.L.R.B. 351 (1977), reversed and vacated Nos. 77-1735 and 77-1758 (D.C. Cir. September 25, 1979), Pet. App. 134a *et seq.*

2. Dolphin Forwarding

Dolphin Forwarding, Inc. and San Juan Freight Forwarding, Inc. are consolidators with facilities in the Port

* Houff's interchange agreements with other ocean carriers were not cancelled and Houff was therefore able to pick up their containers.

of New York. For some time they operated by the deception of falsifying documentation to make it appear that their containers were coming respectively from Massachusetts and Illinois. A.486, 484-485, 540-544, 583-585, 586, 589-594, 631-634. When it became apparent that they were engaged in consolidation activities within the proscribed 50 mile radius, the NYSA-ILA Container Committee assessed liquidated damages against NYSA members who had provided them with containers. Pet. App. 24a, 94a; A.479-480, 552-568. As a result, the carriers informed Dolphin and San Juan that they would no longer supply them with containers. Pet. App. 24a-25a, 94a.

On May 6, 1975 Dolphin filed charges alleging violations of the Act. 29 USC § 158(b)(4)(ii)(B) and (e). San Juan followed suit on May 7, 1975. Administrative Law Judge Henry L. Jalette concluded that the factual and legal issues in the case had already been dispositively determined in *Conex.* Consequently he issued a prehearing order striking all defenses, including that of work preservation A.576-580, and at the hearing completely precluded NYSA and ILA from adducing and developing any facts. A.485-487, 500-506, 516-518, 534, 541-544. In reliance upon *Conex,* he held that the Rules on Containers violated the Act. A three-member panel of the Board affirmed his decision, Pet. App. 90a-99a again on the strength of *Conex* stating:

> (T)he off-pier stuffing and stripping of containers was performed by consolidating companies and not longshoremen. Since the work was not traditional longshore work and had never been performed by longshoremen, the Rules . . . does not have lawful work-preservation object. (JA66). *International Longshoremen's Association, AFL-CIO (Dolphin Forwarding, Inc. and San Juan Freight Forwarders, Inc.),* 236 N.L.R.B. No. 42 (1978), reversed and vacated No. 78-1510 (D.C. Cir. September 25, 1979).

3. Judicial Review

Petitions to the U.S. Court of Appeals for the District of Columbia for enforcement and review of the decisions in *Associated Transport* and *Dolphin* were consolidated. On September 25, 1979, the Court, by a divided panel, refused to enforce the Board's decision on the principal ground that the Board had committed an error of law when it defined the work in controversy as that of the off-pier employees of the consolidators and truckers rather than the traditional on-pier work of longshoremen. The Board's Petition for Rehearing and Rehearing *en banc* was denied on December 13, 1979. On January 21, 1980, this Court granted the Board's petition for a writ of certiorari. A.635.

Summary of Argument

The Court of Appeals correctly held that the National Labor Relations Board's decision was premised on an error of law. The Board misdefined the work in controversy as that of the consolidators' employees off-pier rather than the dockside work of longshoremen, which had historically embraced the handling of all ocean cargo. By looking to the encroaching work rather than the threatened work, the Board made a finding of work preservation logically impossible and contravened the decisions of this Court in *National Woodwork Manufacturers Association* v. *NLRB,* 386 US 612 (1967) and *Houston Insulator Contractors Association* v. *NLRB,* 386 US 664 (1967).

The Board's decision is based on the correlative error of viewing containers as nothing more than big boxes. The Board overlooks the fact that it is a piece of maritime equipment, integral to the vessel, and owned by the ocean carriers, which functions as the cargo-bearing part of the ship, the work of loading and discharging which has always been performed by longshoremen. The NLRB disregards prior holdings of this Court which, in other contexts, have

recognized the true nature of the container as well as the effect of containerization on longshore work. *Northeast Marine Terminal Company, Inc.* v. *Caputo,* 432 US 249 (1977) and *P.C. Pfeiffer Co.* v. *Ford,*——US——, 62 L.Ed. 2d 225 (1979).

In urging that ILA employers have no right of control over the work in controversy, petitioner seeks to sustain the Board's decision by argumentation. The Board has never before addressed this issue, much less found an absence of right of control. Its present argument is premised on the Board's fundamental, erroneous definition of the work in controversy as that of off-pier consolidators' employees. It rests upon the further fallacy that the right of control rests with customers, who in fact are not benefited and who have no interest in whether the goods are consolidated at the pier or at a point slightly inland. To sustain right of control, the Board raises the question of the validity of the Rules on Containers under various other statutes, which issues have never been judicially decided. This approach would create a veritable whirlpool of litigation where a finding of validity under the Labor Management Relations Act would have to await determinations under various other statutory schemes, prolonging any resolution *ad infinitum.*

That ILA employers have the right to control the work as properly defined is evident from the fact that the containers belong to them. The Rules are no more than a contract between an employer and his employees as to the use of the employer's own equipment. At one point, all containers are at the piers and in the custody of ILA employers. Nothing prevents the employer from assigning to longshoremen the task of stuffing and stripping them. That power remains notwithstanding the past or subsequent actions of third parties. Control is not diminished by the fact that the Rules exempt certain containers from being subject to its exercise. The vessel

owners' right of control is not abnegated when it is frustrated by the deceptive practices of consolidators or truckers, nor is it affected by the means taken by the parties to insure its proper exercise.

The argument that, even if the Rules on Containers are validly work preservative, the ILA has abandoned the work is not pressed even by the Board. The NLRB rulings under review were not based on a finding of abandonment. The argument is controverted by the royalty on each exempt container by which the ILA asserts its continuing jurisdiction over the work. It further misunderstands that longshoremen once handled all ocean cargo and what they did not exempt by the Rules, they have retained. It is based upon a completely inapposite decision in *Pacific Maritime Association* v. *NLRB,* 515 F.2d 1018 (D.C. Cir. 1975), *cert. den.,* 424 US 942 (1976) ("Cal. Cartage"), which no court has held to be controlling. Finally, the abandonment argument overlooks the recapture and fairly claimable doctrines under which the ILA could reassert any jurisdiction it might have given up.

The doctrine of work preservation has been recognized by this Court as the will of Congress. It performs a useful, social function in softening the impact of technological change on the livelihoods of workers throughout the nation. Its abandonment now would usher in a period of crippling labor strife. For these reasons, the Board should not be permitted to vitiate the doctrine of work preservation by invoking a legal test which precludes it.

Nor should the Board be permitted legally to redefine the work in controversy (and so control the result) on a case-by-case basis. Such discretion would undercut the rulings of this Court and frustrate the will of Congress. It would subject parties not only to the invalidation of their contracts but to serious pecuniary liability, all at the whim of the agency. The results would become so arbitrary and unpredictable as to make collective bargaining negotiations

impossible. Administrative *fiat* would replace private negotiations as the determinant in labor relations at the expense of collective bargaining in the private sector which is the cornerstone of our labor policy.

POINT I

The Board committed an error of law by misdefining the work in controversy as that performed off-pier rather than that traditionally performed by longshoremen in the handling and distribution of ocean borne cargo.

To decide whether the Rules on Containers fall under the work preservation doctrine enunciated by this Court in *National Woodwork Manufacturers Association* v. *NLRB,* 386 US 612 (1967) as a Congressional exception to the "hot cargo" and secondary boycott provisions of the Act, one must first define the "precise work in controversy". The Board is in error in that it fails to define the work in controversy as that traditionally performed by longshoremen at the pier before the advent of containerization.

A. The Issue Is Exclusively One of Law.

For the first time in all the litigation engendered by the Rules, the Board in this proceeding attempts to characterize its ruling as a finding of fact. This is a transparent attempt to insulate itself from judicial review. It is unavailing in the light of the record, the previous litigation, and the Board's own prior position.

That the issue is one of law is most conclusively established by the absence of any disagreement about the facts. The controversy is not about what happened in the real historical world, but only how those events shall be characterized and interpreted, which depends upon what

legal principles are applied. This is most clear with respect to the Board's determinative finding in each case that longshoremen never performed the work in controversy. On the surface, this would appear to be a factual conclusion. But even the ILA would agree with it if "the work in controversy" is defined, as the Board defines it, to be solely the off-pier activity of truckers' and consolidators' employees after containerization occurred. No one contends longshoremen ever did that. On the other hand, if the work in controversy is defined as the loading of the cargo into the part of a vessel designed to hold such cargo, even the Board would admit that the longshoremen have always performed that work.

Defining the work in controversy does not involve the fact finding process simply because it is a matter of *definition.**

Thus, the widespread judicial cleavage generated by the Rules has turned on and consistently been recognized as a disagreement on the law. In the first instance, the Board overruled the recommendations of its Administrative Law Judge in *Conex,* all the while accepting his factual findings, but changing his definition of the work. On review, the Second Circuit expressly recognized that;

> There is no dispute as to the objective facts in this case. The record is unambiguous .... 537 F.2d at 708.

Judge Feinberg dissented precisely:

> because the Board committed an error of law by focusing on the wrong "work" .... 537 F.2d at 714.

In the two injunction proceedings generated by the charges of Houff and Associated Transport, both district

* As pointed out below, how "the work in controversy" should be defined is mandated by the laws of logic and the will of Congress and the prior decisions of this Court. But these are legal, not factual considerations.

judges found no issue of fact.* On the appeal in *Humphrey I,* the Fourth Circuit split without disagreeing on the facts. Judge Craven dissented on the ground that:

> the work to be preserved is the loading and unloading of ships .... Twenty years ago the longshoremen had it all. Now they seek only to retain a part of it. *Humphrey v. ILA,* 548 F.2d 494, 500-501 (4th Cir. 1977).

Finally, the District of Columbia Circuit below expressly accepted the Board's findings of fact but refused enforcement by reason of the Board's error of law, saying:

> Like the petitioners and the other circuits, this court has no dispute with the Board's factual findings. Rather, our conflict with the NLRB is exclusively focused on the Board's misinterpretation and misapplication of the prevailing law—the doctrine of work preservation.

Indeed, not until that court refused to sustain the Board's rulings because of their legal error did petitioner resort to masquerading that error as a finding of fact, so as to invoke the "substantial evidence" standard of review. In its brief to the Court of Appeals in *Dolphin,* the Board was more forthright. It recognized the issue as a matter of definition but claimed that the right to define "lies 'within its discretion' ". (Respondents brief in No. 78-1510 below, p.16).

Since the objective facts are not in dispute and there is unanimous judicial agreement that the issue is one of law, the Court of Appeals correctly refused to sustain the Board's rulings which it found to be based upon

* Judge Merhige found that the Rules were work preservative as a matter of law. *Humphrey* v. *ILA,* 401 F.Supp. 1401, 1407 (E.D. Va. 1975). Judge Young said "the facts themselves are not in dispute" but declined to find a valid work preservation object as a matter of law. *Humphrey* v. *ILA,* (D. Md. No. Y-75-1395, March 25, 1976).

errors of law. *NLRB* v. *Babcock & Wilcox Co.*, 351 US 105, 112 (1966); *NLRB* v. *Brown*, 380 US 278, 290-292 (1965); *SEC* v. *Chenery Corporation*, 318 US 80, 94 (1943).

B. The Board Misconstrued the Law of Work Preservation.

The Board's error is its definition of the work in controversy as that performed off-pier *after* the advent of containerization by employees of consolidators rather than that historically performed dockside by longshoremen. That the Board in fact does so premise its case permeates its decisions and arguments. In *Conex, supra,* the Board expressly found:

> . . . that the on-pier stripping and stuffing work performed by longshoremen as an incident of loading and unloading ships does not embrace the work traditionally performed by (the consolidators) at their own off-pier premises. (221 N.L.R.B. 956 at 960)

As petitioners' brief admits: "(I)n the *Dolphin* proceeding, the Board followed its decision in the *Conex* case".

In *Associated Transport,* the Board said:

> . . . (I)t is not important what type of enterprise was doing the work; rather, what is important is that the Respondents' members here, as in *Consolidated Express,* had *not* historically done the work." (231 N.L.R.B. 351; Pet. App. 116a) (emphasis in original)

In its brief to this Court, petitioner does not make a forthright statement of its definition, but it is implicit in all its arguments*. Petitioner's brief goes so far as to

* The Board's definition is manifested especially by petitioner's constant use of descriptive phrases to modify the word "work", such as "off-pier," "at inland terminals," "at off-shore terminals," "at inland facilities." Such language, of course, would be impossible if the Board were looking to the on-pier work of longshoremen.

claim the Court of Appeals "has misapprehended the work in controversy" when it looked to the tradition of longshoremen (PB, p.46).

In effect, petitioner asks the courts to view the drama starting in the third act. It focuses on a point in time when containerization has already begun and the loading work of consolidators' employees, theretofore non-existent, has already been created. This ignores two previous stages: when longshoremen did all the work of loading and unloading ships and when containerization was introduced and shifted that work away from them. By making the new work created by containers its yardstick to determine work preservation, the Board committed reversible error of law.

In *National Woodwork, supra,* which all parties agree is controlling, this Court held that the "will not handle" prefabricated doors provision of the carpenters' contracts was valid as work preservation, saying:

> . . . substantial evidence supported the finding that the conduct of the Union on the Frouge jobsite related solely to preservation of the traditional tasks of the *jobsite carpenters.* 386 US at 646 (emphasis supplied)

In a companion case, *Houston Insulation Contractors, supra,* the Court likewise looked to the work of the union whose collective bargaining agreement was challenged, saying:

> (T)he conduct complained of herein was taken to protect . . . a deprivation of work its object being to protect or preserve for employees certain work customarily performed *by them.* 386 US at 665. (emphasis supplied)

In both cases this Court looked to the work of the employees whose union was charged with violations of

the Act, *not* to the work of the innovators' employees*. In *National Woodwork,* the Court quoted the opinion of the Trial Examiner as follows:

> I am convinced and find that the task of cutting out and fitting millwork, including doors, has, at least customarily, been performed by the carpenters *employed on the jobsite.* * * * The provision guards against encroachments on the cutting out and fitting work of the contract unit employees who have performed that work *in the past.* Its purpose is plainly to regulate the relations between the general contractor and his own employees and to protect a legitimate economic interest of the employees by preserving *their unit work.* 386 US at 618 (emphasis supplied)

Such an approach is mandated by both law and logic. Logically, to define the work in controversy as that later performed by the employees of the innovators preordains the result and makes further inquiry unnecessary. It precludes any possible finding of work preservation. As a practical matter, there will always exist a later tradition of the innovators' employees doing certain work. Unions do not engage in activities to preserve work and cases do

* The Board's approach in this case also represents a marked change of position by the NLRB itself. In all other work preservation cases, the Board has correctly looked to the work to be preserved. See, *Houston Insulaior Contractors Association* v. *NLRB, supra; Sheet Metal Workers International Association Local 223* v. *NLRB,* 498 F.2d 687 (D.C. Cir. 1974); *Local 742 United Brotherhood of Carpenters and Joiners* v. *NLRB,* 444 F.2d 895 (D.C. Cir. 1971), *cert. denied* 404 US 586 (1971); *Canada Dry Corp.* v. *NLRB,* 421 F.2d 907 (6th Cir. 1970); *American Boiler Manufacturers Association* v. *NLRB,* 404 F.2d 547 (8th Cir. 1968), *cert. denied* 398 US 960 (1970); *NLRB* v. *Local 164, IBEW,* 388 F.2d 105 (3d Cir. 1968); *NLRB* v. *Local 28 Sheet Metal Workers International Association,* 380 F.2d 827 (2d Cir. 1967). Even with respect to the Rules on Containers, the Board's General Counsel in *ICTC, supra,* and its Administrative Law Judge in *Conex, supra,* employed the correct definition.

not arise until a concrete threat poses itself. The issue is whether the work was the union's to begin with, not whether the others had later begun to do it.

The question in deciding work preservation must be: what is the work *to be preserved?* This, in the very language of the doctrine, must be the pre-existing work of the original union, the threatened work, the work whose existence is now in jeopardy. One must look to it and see whether or not it is being siphoned away, destroyed, or displaced by the activities against which the challenged provision is directed.

The test employed by the Board, then, is tautological: whether the innovators have been doing the work the innovators have been doing? Of course, they have. This makes a finding of a work preservative motive by the threatened union impossible *a fortiori.* It literally writes out of the law the doctrine of work preservation, which this Court has expressly recognized and upheld as the will of Congress.*

On this proceeding, petitioner does not forthrightly ask the Court to overrule *National Woodwork,* but pretends that the Board's decision falls within the doctrine enunciated there. The credibility of this posture is undercut by the appearance herein as *amici curiae* on the side of the Board of the very parties whose position this Court rejected in *National Woodwork.*. Its fallacy is apparent if one applies the Board's present approach to the facts of *National Woodwork* itself or its companion case.

* The inevitability of this result was recognized at the outset by Administrative Law Judge Ordman when he wrote in *Conex*:

> Indeed, the legitimacy of a work preservation objective would be virtually precluded in any situation where it could be established that other employees at other sites were doing or had done the work for which protection was being sought. 221 N.L.R.B. at 974.

In *National Woodwork,* the employees of the door manufacturers were already engaged in the work of prefabricating doors at the time the carpenters refused to install them. Had this Court looked at the work of the door manufacturers' employees (performed at the latter's plant) and defined that as "the work in controversy", it could not have found a valid work preservation motive in the carpenters' "will not handle" rule. Similarly, in *Houston Insulation Contractors* v. *NLRB,* 386 US 664 (1967), had the Court looked to the work of the employees of the manufacturers to whom the work was contracted out, it could never have found a valid work preservation motive in the union's insistence that the work not be contracted out.

Indeed, under the Board's approach, no work preservation clause can have legal validity, not even those which have already been held to be valid. Contrary to the Board's approach, the controlling precedent of *National Woodwork* requires that the validity of a work preservation clause be determined by defining as the "work in controversy" that work which the clause seeks to protect. To do otherwise, as the Court of Appeals held, is clearly an error of law.

POINT II

The Board misconceived the essence of containerization—an innovative technology that reduced longshore work.

At the core of the Board's misdefinition of the work in controversy is a fundamental misconception of the nature and importance of containerization. Significantly, the Board's decisions cavalierly discount the unassailable fact that containerization was an innovative process which *took work away* from longshoremen. The Board views the container as nothing more than a big box. It deals with the container as simply a more advanced method of packaging cargo, as though it were part and parcel of the merchandise transported.*

A. The Nature of Containers

One's whole approach to the issues in this litigation is colored by one's perception of the container. If one adopts the Board's "big box" approach, it is easy to dismiss the ILA's claims of work preservation with the observation that longshoremen have always transported packages of varying sizes to and from ships and this is just a bigger package, so where have they lost?

This over-simplistic approach is, of course, belied by the economic statistics, which indisputably show a market decline in longshore labor opportunities directly correlative to increasing containerization. The answer to what ILA has lost by reason of containers is measurable in manhours and dollars and cents. Beyond that, however, the "big box" approach misconstrues the nature of containers.

That the container is not part of the cargo is apparent from both technical and legal considerations. Technically, the container functions as part of the ship to which it is physically attached and becomes a component. Unlike ordinary receptacles, a container can be affixed only to a ship specifically designed to carry it and physically compatible with it. Containers cannot be used indiscriminately on any vessel.

Legally, the containers in these proceedings are *the property of the owner of the ship,* the longshoremen's employer, not of the shipper or the consignee of the goods and certainly not of the consolidators who transport them.

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* The dissenting member of the Court of Appeals, Judge Robb, fell squarely into this error, saying:

> "I am not impressed by the fiction that a container is part of the hold of a ship; if it is, than so is any large box in the hold of a ship." (Pet. App. 82a)

Thus, unlike the boxes, cartons, drums and bags in which goods of various kinds are packaged for break-bulk shipment, which do belong to those utilizing the vessel's facilities, the container is not a part of the goods transported. Rather, it is an integral part of the maritime transportation system.

The impact on longshoremen's work of this automation of their employers' equipment is undeniable. All the foot-pounds of labor, all the manhours of work which once had to be expended on moving the cargo from the hold of the ship onto the dock and thereafter into the van of the truck have been done away with. Those foot-pounds and manhours of work lost by the transformation were historically those of the ILA membership. Thus, the union correctly perceived containerization as a threat to the work of its members and rightfully objected to containerization for the singular motive of work preservation.

B. The 50-Mile Rule

The fact that the movable container is the equivalent of the hold of a ship created the possibility of establishing surrogate docks within a short distance of the piers. To prevent this, the fifty-mile radius was imposed.

Its purpose is both obvious and critical. The thrust of the Rules was to permit employers and their customers to take advantage of the technology of containers while at the same time minimizing the destructive effects on the work opportunities of longshoremen at the docks. To permit the transfer of goods to be interrupted at a point approximately one hour short of the docks, where they would then be loaded into the functional equivalent of the hold of a ship, would be in effect to extend the docks fifty miles inland (or, as in *ICTC,* across the street from the piers). For the bulk of their journey, the goods would

have traveled piecemeal, enjoying none of the benefits of the new technology. The only purpose and effect of not permitting them to continue over the few additional miles to the piers would be to shift from the piers to a nearby point the work of loading these goods, with the concomitant result of transferring it from the longshoremen who had traditionally performed it to other labor.

Throughout their briefs, the Board and its allies seek to cloak their position in the halo of the public interest. The above considerations show this for the canard it is. Where the consolidators operate within 50 miles of the pier, the goods will be subject to all the hazards of going astray, breakage, or pilferage for the great part of their journey. The shippers of goods have no interest whatsoever in whether their cargo is containerized an hour or so sooner or later. Similarly, shortstopping is for the benefit of the truckers, not their customers, who are indeed charged extra if they wish to avoid it (PB, p. 15). The Board's appeal to the rights or preferences of shippers wishing to take advantage of consolidation is pure fiction. Consolidation in violation of the Rules confers no benefit whatsoever on the customer. It only shifts the dock slightly farther inland. It makes no contribution to progress, for it does not take real advantage of the technology. Shortstopping actually subverts that advantage. The Rules, on the other hand, permit the real technological value of containerization to be realized by carriers and shippers alike and prevent only its prostitution to deprive longshoremen of work they have always done and still can do.

To discourage this egregious, deliberate diversionary tactic by the automated carriers and their customers, and to prevent the loss of such work, the Rules provided that all containers consolidated within the fifty-mile radius must be stripped or stuffed at the docks by longshore labor.

Respondent ILA is well aware of the distaste generated by the stuffing and stripping provision of the Rules. Petitioner's brief described them by the pejorative, "make-work". (PB, p. 52) This is misleading in light of the

underlying realties. The work of longshoremen is not new. It "outruns history". Under the Rules they do nothing they have not done from time immemorial. Rather, it is the work of the *consolidators'* employees (which interrupts the flow of goods just short of the docks and places them in container-holds, just as the longshoremen otherwise would do about one hour later) which is the "make-work". It is consolidation within fifty miles of the port that is the unnecessary intrusion into the traditional transportation process.

This point is even clearer on import, where longshoremen strip and restuff inbound containers, which are then moved by truck for less than an hour and restripped, sorted and distributed to individual recipients by the consolidators' employees. It is the consolidators' and truckers' insistence that the containers be restuffed for movement to their sheds—instead of the goods being sorted and loaded onto trucks at the dock as had always been done—that interjects the "make-work".

The Rules, then, recognized that the establishment of surrogate docks less than fifty miles away from the port was not a genuine utilization of the new technology. It abused and distorted the character of the container as a piece of maritime equipment. It served as a medium to transfer still necessary work from one group of employees to another. Consequently, containers consolidated or deconsolidated wtihin fifty miles of the port were not among those which the ILA exempted from its traditional right to handle. As hammered out at the collective bargaining table, the Rules permit every party to reap the benefit of technology, *except* the benefit of transferring the same work from ILA members to cheaper labor.

C. Judicial Precedent Has Correctly Characterized the Container.

The correct characterization of a container not as a method of packaging but as the functional equivalent of the

hold of the ship has not escaped judicial recognition. In *Northeast Marine Terminal Company* v. *Caputo,* 432 US 249 (1977), *affirming Pittston Stevedoring Corp.* v. *Dellaventura,* 544 F.2d 35 (2d Cir. 1976), this Court made just such a determination precisely with respect to the work of longshoremen in relation to the coverage under the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act (LHWCA). The Court had to determine, initially, whether two employees were engaged in maritime employment (i.e., to decide whether their activities in relation to the handling of containers were truly "longshore work"). It said:

> In effect, the operation of loading and unloading has been moved shoreward; the container is a modern *substitute for the hold of the vessel.*. As Judge Friendly observed below, "Stripping a container . . . is the functional equivalent of sorting cargo discharged from a ship; *stuffing a container is part of the loading of the ship* even though it is performed on the shore and not in the ship's cargo holds." * * * 432 US at 270-271 (emphasis supplied)
>
> Congress' intent to adapt LHWCA to modern cargo handling techniques clearly indicates that these tasks, hithertofore done on board ship, are included in the category of 'longshoring operations'. 432 US at 271.

In a footnote the Court said:

> The work of longshoremen, the loading and unloading of cargo remains the same; only the procedure and the place of performance (have) changed. 432 US at 270, n. 32

Moreover, the Court emphasized:

> Until the container was stripped, the loading and unloading process was clearly incomplete. The only geographical concern Congress exhibited was that the

> operation take place at a covered situs. * * It was precisely Congress' intent to accommodate the mobility of containers and the ability to transport and strip them at locations removed from the ship. 432 US at 271, n. 33

The Court discounted an argument based on a "point of rest" theory because *inter alia*:

> . . . the theory fails to accommodate the intent to cover those longshoring operations that modern technology had moved onto the land. Coverage that stops at the point of rest excludes those engaged in loading and unloading the *modern functional equivalent of the hold of a ship.* As we have indicated, Congress clearly intended to cover such operations. 432 US at 276 (emphasis supplied).

In *Caputo,* this Court recognized the right of a longshoreman to benefits under the LHWCA for any injury in connection with the movement of containers precisely *because* those containers are the functional equivalent of the longshoremen's traditional work. Ironically, under the NLRB's decision, the same longshoreman is not entitled to have his union bargain with his employer to preserve his rights to load and unload those same containers because, it is said, this is the traditional work of the consolidators' employees.

Thus, this Court has already recognized the nature of the container as urged by respondents.* Granted that the

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* The true nature of the container was earlier recognized in an entirely different context. In *Leather's Best* v. *S.S. Mormaclynx,* 451 F.2d 800 (2d Cir. 1971), an admiralty proceeding, the matter was purely one of contract law and the limitation of an insurer's liability of $50 per package. The Second Circuit expressly rejected the "big box" theory of the Board in this case and held that the container was "functionally a part of the ship." *Id.* at 815.

law is full of anomalies, the ILA respectfully submits that such recognition indicates a reality, not a judicial fiction. Although the Board attempts to sweep aside the *Caputo* holding as arisng in an entirely different context, it fails to overcome the fact that, for this Court to come to the legal conclusion it did, it had to make a characterization of "the container" in the real nature of things, a characterization, which is equally applicable to and dispositive of the case at bar.

* * *

In summary, the Board's refusal to recognize, as the courts have, that the container is the cargo-bearing part of a ship, which has always been serviced by longshoremen, leads it to make a false distinction based upon where the work is done. By focusing upon inland sites and defining the work in controversy to be that of employees there the Board makes a finding of work preservation by the ILA impossible. This directly contravenes the holding in *National Woodwork, supra.* The Court of Appeals was correct in identifying this error of law, and its decision should be affirmed.

POINT III

Longshoremen's employers have right of control over the work.

In an effort to salvage the Board's decision, petitioner and its allies invoke the doctrine of "right of control" approved by this Court in *NLRB* v. *Enterprise Association of Steam Pipefitters,* 429 US 507 (1977). The argument has a fundamental weakness. As the Court of Appeals below noted, right of control played no part in either of the Board's decisions now before the Court. Nor was this ground urged by the Board in *Conex* or in any other of its decisions with respect to the Rules. The argument is plainly something concocted for purposes of the instant

proceeding. The Board urges here as an adversary litigant something it never espoused in its fact-finding or adjudicatory role.

That for seven years in a plethora of litigation the Board has never raised lack of control on the part of ILA employers strongly indicates the disvalue of that test to invalidate the Rules. Respondents suggest that the Board has never raised the right of control for the reason that it is self-evident that ILA employers do have the right to have their own employees work on their own equipment.

Initially, petitioner's argument suffers in that it is premised on the Board's fundamental error in this case—the misdefinition of the work in controversy. One can find lack of control of the work only if one defines the work to be that of the innovators' employees off pier. The Board implicitly admits this. (PB, pp. 28, 46). It is forthrightly admitted by the *amicus* brief of National Woodwork Manufacturers, *et al.* at p. 16. If, then, as demonstrated in Point I hereof, pp. 21 through 28, *supra,* the Board initially erred in definition of the work in controversy, the entire premise of its lack of control argument likewise falls.

The Board urges that there exist two different economic markets, one of goods sent directly to the piers and one of goods moving through consolidators. This is a fiction of the Board's own devising. The only market here is the overseas shipment of cargo. Ultimately all goods arrive at the piers, whether their route be direct or through freight forwarders, or through consolidators. Historically, longshore employees of the vessel owners handled all these goods. Consolidators are freight brokers, middlemen. They do not lose that character because vessel owners make containers available to them. Shippers and consignees remain the customers of the shipping companies, and their ultimate interest remains in the ocean transport of their goods.

Shippers do not control the work. The notion that for longshore employers to continue to have their own employees handle the cargo violates the contractual rights of shippers is untenable. Whatever may be the case of containers consolidated well inland, it is manifestly untrue to claim that shippers have any concern over whether their goods are stuffed or stripped at the piers or somewhere else within the 50 mile radius. In either case, all the benefits of containerization extolled by the Board simply do not apply. Shippers utilize pier-adjacent consolidators for purposes of assembly and routing, as they once utilized freight forwarders—not out of any desire to have the goods stuffed or stripped an hour sooner or later.

Moreover, such a desire would not take precedence over the rights of vessel owners. A carrier's customers have the right to have their goods transported, not to dictate the internal work policies of the shipping lines. They no more have the right to say who shall load or discharge the carrier's containers than they would to insist that breakbulk vessels be serviced by labor of their own choosing. Once again, the correct characterization of the container as the cargo bearing part of the vessel lays to rest the Board's error.

The suggestion that ILA employers are precluded by law from permitting their own employees to work on their own equipment is a patent circular reasoning. No court has held that the Rules violate the anti-trust laws or the Shipping Acts. With respect to the former, the Second Circuit in *ICTC, supra,* held the opposite. The decision of the Third Circuit in *Consolidated Express, Inc.* v. *New York Shipping Association, et al.,* 602 F.2d 494 (3d Cir. 1979), that there *may* be a violation rested upon the premise, unchallengeable in that case because of collateral estoppel, that the Rules violate the LMRA. Indeed, in its brief to this Court as *amicus curiae* on the ILA's and NYSA's petition for writs of certiorari to the Third Cir-

cuit (Nos. 78-1902 and 78-1905) the Board urged this Court to defer consideration of the anti-trust case until it decided the labor aspects in the case at bar. To now urge that the validity of the Rules under the labor act turns on the anti-trust aspects is a complete reversal of position and a plain case of bootstrapping.

Similarly, the decision of the Federal Maritime Commission that the Rules violate the Shipping Acts, 46 USC § 801 *et seq.*, 46 USC § 843 *et seq.*, has never been confirmed by any court. Nor will the ILA, which is not subject to the Shipping Acts, attempt to argue that case *de novo* before this Court. What is now to be decided is the validity of the Rules under the LMRA. Whether or not they impinge upon any other statutory scheme must be decided in other litigation. To subsume into this case, via right of control, those other issues would be to create a Catch-22 situation, wherein lawsuit after lawsuit would have to be stacked in a holding pattern and no definitive decision reached under any law until the last administrative agency or plaintiff had his say.

When one looks at right of control in a labor context, the answer is as self-evident as the Court of Appeals found. Only containers which are the property of ILA employers are covered by the Rules. It is fundamental that an employer has the right to assign to his own employees the work on his own equipment. Conversely, a union bargaining with its own employer over the use of his property is engaged in preeminently primary activity. It need not be belabored that, if the activity is primary, the fact that it has even disastrous effects on other parties does not make it unlawful.* *National Woodwork,*

* Contrary to the Board's assertions, the Rules do not require carriers to cease doing business even with known violators. The only requirement is that the consolidators not be furnished the carriers' containers. They may still consolidate containers of their own procuring, and these will be handled intact. Or, they may bring goods to the pier breakbulk as was the practice before containerization.

supra, 386 US at 632. See also, *NLRB* v. *The Fruit and Vegetable Packers and Warehousemen Local 760,* 377 US 58 (1964).

Nor have ILA employers ever given up or contracted away their right to give the work to their own employees. An examination of the Equipment Interchange Agreements between the vessel owners and motor carriers, as well as of the delivery orders and bills of lading, shows that they did not grant a right or license to the truckers to rehandle or tamper with the cargo in the containers. Stuffing and stripping are and remain activities incident to the handling of the cargo, not of the containers. It is equally clear that the concept of "legal responsibility" contemplated by the interchange agreements in no way involves the merchandise and is a term of general trucker liability for damages to the ocean carrier's equipment.

The Board and its supporters' reliance on the right of control aspects of *National Woodwork Manufacturers Association* v. *NLRB,* 386 US 612 (1967) and *NLRB* v. *Enterprise Association of Steam Pipefitters,* 429 US 507 (1977) cannot stand scrutiny. The factual situation in those cases both involved obvious subcontracting situations, not easily analogized to the peculiarities of the instant case.* But a comparison of the respective situations is illustrative in dispelling the Board's argument.

The carpenters' employer in *National Woodwork* was purchasing prefit doors, which had the effect of doing away with the work of fitting blank doors traditionally

* For all intents and purposes, the vessel carriers making their containers available to pier adjacent consolidators and giving them a preferential rate for stuffing and stripping them is indistinguishable from subcontracting out the work of longshoremen. But, in this case, the vessel carriers are the prime contractors, the consolidators the subcontractors. Obviously, right of control lies with the former. The Rules specifically forbid subcontracting, and even the Board recognizes that this is lawful (PB, p. 37).

performed by carpenters at the construction jobsite.* This Court found a valid work preservation objective even in that circumstance. If, in *National Woodwork,* the carpenters' employer had already purchased and owned uncut doors, which it then sent out to the manufacturer's factory to be prefit, the finding of work preservation would have been even more readily made. It would have been based on the fact that the employer was subcontracting out the carpenters' fitting work. This is precisely the fact pattern in the case at bar. The union's employers are sending out their property (blank doors/containers) to be worked on (fitted/loaded) at an outside (manufacturer's/consolidator's) facility by employees other than the employers' (carpenters/ILA longshoremen).

In *Pipefitters,* the arrangement was the purchase and installation of already completed units ordered by the general contractor, not by the subcontractor/employer. The analogy here would be if the subcontractor in *Pipefitters* was authorized to provide the units, which he owned, and attempted to send them out for assembly by off-site workers.

Ascertaining the right of control is a test to aid in determining the basic question of whether or not a union's activity is primary or secondary. *Pipefitters, supra,* 429 US at 521-528. Where, as here, the activity is quintessentially primary—bargaining with one's own employer over the use of his equipment—the test is unnecessary and redundant. To apply it is almost to state the obvious.

As all parties agree, ascertainment of right of control depends upon definition of the work in controversy. If the doctrine of work preservation is to survive, the work in

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* It need hardly be noted that, if in *National Woodwork,* this Court had defined the work in controversy as that of the door manufacturers' off-site employees (the analogue to the consolidators' employees here), Frouge would have had no right to control that work, and the result would have been different.

controversy must be the threatened work, here the pierside stripping and stuffing of the ILA employers' containers. There is no question that ILA employers control that work. The containers are at the piers and belong to the vessel carriers. Whatever may happen before or after, the longshore employers can have their employees load or unload the cargo at the docks. This is true on import whether or not a trucker or consolidator may request that a container be reloaded so that they may later restrip it at their facilities. It is equally true on export whether or not a consolidator may have already engaged in extraneous stuffing. While the carriers' containers are in the carriers' possession, no law or practical constraint prevents the carrier from having its employees stuff or strip it.

The Rules require nothing more. The ILA is concerned with preserving for its members the work they had always. If a trucker or consolidator wishes to stuff or strip a particular container twenty times in addition to the longshoremen's performance, this would be of no concern to the union and would not violate the Rules. The Rules, then, do not prevent third parties from doing anything. They only guarantee that longshoremen do once at the piers the work that their employers can give.

The problem arises from the fact that, in the interest of progress and under the auspices of federal mediation, the ILA agreed to relinquish its right to handle the cargo carried in certain specified containers. It is a problem only because the exempted containers are characterized by their subsequent or future history, i.e., containers going directly to or from a beneficial owner or containers consolidated outside the 50-mile limit, and that history is subject to falsification.

ILA employers control all the work at the piers. They could have longshoremen strip and stuff every container there. But the ILA does not insist on that. It is only the deception of the consolidators and truckers, who make it

impossible to know whether or not a particular container is within the exempt class, that interferes with the exercise of the vessel owners' right to give his employees the work they have retained. If a carrier knows that a container has been unnecessarily stuffed within 50 miles of the port by a consolidator or that it will be shortstopped within 50 miles by a trucker, he can have his longshoremen handle the cargo within. But, when the character of the container is disguised by silence or false documentation, he is frustrated from exercising that right. The frustration is practical, not legal.

Given the duplicity, only two alternatives are open to the vessel owners wishing to exercise effectively their right to assign their employees the work pursuant to their contract. Either the right must be exercised with respect to all containers or the deception must be ameliorated. The Rules as they have evolved chose the less drastic alternative. Instead of the ILA's reasserting its right to strip all containers, deception was discouraged by the imposition of liquidated damages on containers stripped in violation and by the withholding of containers from consolidators who were known violators of the 50-mile provision and whose facilities within the radius could have no other function.

These enforcement mechanisms in no way alter the right of control. Once it is admitted that the vessel owners had the right to assign the work of stuffing and stripping at the piers, the primary objective of the Rules to preserve that work for longshoremen is established. The actions of the carriers, whether contractual or unilateral,* are only to protect, preserve, and exercise their right of control as they have bargained to do.

Application of the right of control test, then, further demonstrates the primary nature of the Rules' objective

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* As in the case of demanding reimbursement from offending shortstoppers, which is not required by the Rules.

and is added reason to sustain the holding of the Court of Appeals.

POINT IV

The Board's decision cannot be sustained on a theory of abandonment.

Intervenor Houff Transfer, Inc. persists in the argument that, even if it be held that the Rules have a valid work preservation purpose, the ILA had abandoned any right its members may have had to stuff and strip containers. (Houff's Brief, p. 27 ff). The abandonment argument is no longer a serious issue. It was given short shrift by the Second Circuit in *Conex, supra,* 537 F.2d at 712. It formed no part in the NLRB decisions now under review. It has not been urged to this Court by the Board.

Abandonment cannot be supported by the record in evidence. From the start, the Rules contained provision for a royalty to be paid on each container the right to stuff or strip which was bargained away. This royalty was in recognition of the ILA's jurisdiction over the work of handling the contents of such exempt containers. The royalty has never been waived or deleted from the Rules. Thus, the uncontroverted record shows an uninterrupted claim by the ILA to all of its members' historic work. Under the Rules, that claim is satisfied in some instances by continuing to perform the actual work, in others by payment of the royalty.*

If it be true that the ILA contracted away the right to service FSL containers, those shortstopped within 50 miles

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* As the word itself denotes, the "royalty", as in other legal areas like patents and licenses, indicates a proprietary or other right to exclusivity with respect to the item on which the royalty is paid. The royalty normally persists only as long as the right itself pertains. Once the right is extinguished, then so is the royalty payment.

of the pier simply do not fall into the class that was exempted. Therefore, the right to strip and stuff such containers was retained by longshoremen.

Intervenor Houff relies on a totally inapposite case, the *per curiam* determination of *Pacific Maritime Association* v. *NLRB*, 515 F.2d 1018 (D.C. Cir. 1975), *cert. den.*, 425 US 942 (1976) ("Cal. Cartage") which, without opinion, enforced an NLRB decision, 208 N.L.R.B. 994, with respect to containerization on the West Coast to which the ILA is a stranger. The pre-existing work patterns and the history of containerization on the two coasts are entirely different.* No court has found *Cal Cartage* controlling with respect to any case involving the Rules on Containers.** In neither of its decisions did the NLRB, or the respective Administrative Law Judge, rely on *Cal Cartage*. The Board did not cite the case to the District of Columbia Circuit and does not urge it here.***

Finally, any question of abandonment is resolved by the doctrine of work reacquisition recognized by the courts

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* See Ross, *Waterfront Response to Technological Change: A Tale of Two Unions*, 21 Lab. L.J. 397 (1970).

** It should be noted that the District Judge Robert Merhige of the Eastern District of Virginia sat by designation on the District of Columbia appellate panel that affirmed *Cal Cartage* in 1975. Later in the same year, Judge Merhige denied the Board's application for a 10(1) injunction in *Humphrey* v. *International Longshoremen's Association*, 401 F.Supp. 1401 (E.D. Va. 1975), *rev'd.* 548 F.2d 494 (4th Cir. 1976), on the very ground that the ILA had not abandoned the East Coast work but could recapture it. That Judge Merhige was reversed on other grounds does not change the fact that his familiarity with the record in both cases led him to distinguish the conduct of the two unions involved.

*** Moreover, in *Cal Cartage* the Board did not commit the error it has perpetrated in the instant case of looking at the work of the non-unit employees instead of the work of longshoremen. It made its ruling of focusing upon the work of West Coast longshore units, not of consolidators.

and the NLRB itself. Even if the record can be construed as supporting a conclusion that the ILA had not invariably or effectively enforced its right to all container work during the early years of automation, the later evolution of the Rules is still lawful.

Unquestionably, the same container revolution that generated consolidation and made possible the practice of shortstopping simultaneously decimated longshore work at the piers. The two phenomena are totally correlative. The work involved in consolidating containers or shortstopping, then, is "fairly claimable" by the ILA. *Meat and Highway Drivers, etc.* v. *NLRB*, 335 F.2d 709 (D.C. Cir. 1964); *Sheet Metal Workers International Association, Local Union No. 223* v. *NLRB*, 498 F.2d 687 (D.C. Cir. 1974). See also *Local Union No. 636 Plumbers* v. *NLRB*, 430 F.2d 906 (D.C. Cir. 1970); *Sheet Metal Workers Local No. 98* v. *NLRB*, 433 F.2d 1189 (D.C. Cir. 1970).

Similarly, the work was subject to "recapture", a principle approved by the Board, and sustained by the courts. *United Association of Pipefitters, Local 455*, 167 N.L.R.B. 602 (1967); *Retail Clerks, Local 648 (Brentwood Markets, Inc.)*, 171 N.L.R.B. 1218 (1968); *Teamsters Local Union 282, IBET (D. Fortunato, Inc.)*, 197 N.L.R.B. 124 (1972); *Retail Store Employees Local 876*, 174 N.L.R.B. 424 (1969); *American Boiler Manufacturers Association* v. *NLRB*, 404 F.2d 547 (8th Cir. 1968), *cert. den.* 398 US 960 (1970); *Canada Dry Corp.* v. *NLRB*, 421 F.2d 907 (6th Cir. 1970). See also Judge Merhige's analysis in *Humphrey I, supra.*

The very principles that warrant application of the Board-approved doctrine of recapture reemphasize the fundamental considerations in this case—that the ILA's activity was primary, directed to its own employers, and

designed to preserve the historic work of longshoremen.* The same considerations, then, which require a finding of primary, work-preservative activity also preclude any finding of "abandonment" if the Rules are found otherwise lawful.

POINT V

The Board's decisions should be vacated.

This Court should affirm the Court of Appeals' vacating of these rulings of the NLRB which are both erroneous and mischievous. The doctrine of work preservation has long been recognized as the will of Congress. *National Woodwork Manufacturers Association* v. *NLRB,* 386 US 612, 640-642 (1967). It is respectfully submitted that the concerns expressed by this Court and Congress apply with added vigor to the present case. The abolition of the work preservation doctrine, implicit in the Board's definition of the work in controversy, would be disastrous for American labor and perilous for the American economy, as well as contravening Congressional policy as enunciated in the Labor Management Relations Act,

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* Indeed, the Board's departure from its normal "recapture" approach in *Conex* was the occasion of analysis and criticism in an incisive and comprehensive annotation in the Harvard Law Review. The author observed:

> "The agreement in *Conex* illustrates this preservation aspect of recapture in that it would have protected longshoremen from incrimental effects of containerization which was accelerating after 1970. Second there is a discernible connection between the bargaining units and the subject of the pact. While more attenuated than in preservation—where the current jobs of the members are at stake—there is a historical relationship between the units and the new jobs which, in part, displaced its functions, a connection which is not in work acquisition agreements." *Work Recapture Agreements and Secondary Boycotts: ILA* v. *NLRB* (*Consolidated Express*), 90 Harvard Law Review 815 at 826.

29 USC §§ 141, 151. Moreover, acceptance of the Board's position would result in the novel and dangerous precedent of having the terms and conditions of a duly negotiated collective bargaining agreement subject to administrative veto. This Court should not sanction such a blatant and unwarranted intrusion by the Board into the fields of legislation and collective bargaining.

The doctrine of work preservation performs a useful, social function in softening the impact of technological change on labor relations and, indeed, the livelihoods of workers throughout the nation. In this it makes a significant contribution in avoiding or minimizing industrial strife and insuring the free flow of commerce. *NLRB* v. *Burns International Security Services, Inc.,* 406 US 272 (1972); *NLRB* v. *American National Insurance Company,* 343 US 395 (1952); *NLRB* v. *Bradford Dyeing Association,* 310 US 318 (1940); *American Communications Association, C.I.O.* v. *Douds,* 339 US 382 (1950). Experience has demonstrated that to welcome technological change without safeguards is to invite unforeseen difficulties and to weaken the ability of the union to protect its members.* The abandonment or weakening of work preservation in the face of rapid technological change would usher in a period of crippling labor strife which would obstruct the free flow of commerce, thereby damaging the already precarious American economy.

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* See, Ross, *Waterfront Labor Response to Technological Change: A Tale of Two Unions,* 21 Lab. L.J. 397 (1970). After comparing the response of the ILA and the ILWU to containerization, the author concluded, "There is reason to believe . . . that the optimistic rate in which labor-saving technology is introduced is not the fastest possible rate. To the extent that this is true, union impediments may be considered as not merely obstacles to progress, but as efforts to buy time in which the human costs of change can be softened and made more tolerable." *Id.* at 419.

The doctrine of work preservation is an inherently reasonable approach to facilitate the orderly introduction of technological change in the workplace.* Free collective bargaining allows the parties to arrive at an internal accommodation among competing social and economic values: industrial efficiency versus full employment and the introduction of new technology versus maximized sharing by workers in the increased profits resulting from such technology.** Thus, when viewed in its proper context, work preservation becomes a necessary part of the collective bargaining process by being a useful tool: (1) in establishing, revising and administering many of the rules of the workplace, and (2) in determining the compensation of employees for past and present services, and in influencing the distribution of the increased profits brought about by technological innovation.*** This is the very essence of national labor policy. *NLRB* v. *Local Union No. 1229, International Brotherhood of Electrical Workers,* 346 US 464 (1953); *NLRB* v. *Allis-Chalmers Manufacturing Company,* 388 US 175 (1967); *H. K. Porter Co.* v. *NLRB,* 397 US 99 (1970); *Local 24 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO* v. *Oliver,* 358 US 283 (1959); *Mastro Plastics Corp.* v. *NLRB,* 350 US 270

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* See "Reflections On The Role Of The NLRB And The Courts In The Collective Bargaining Process—A Fresh Look At Conventional Wisdom And Unconventional Remedies" by Charles J. Morris, pp. 9-17 in *Developing Labor Law,* edited by Frances Penn and Laurel Black, American Bar Association and the Section of Labor Relations Law 1977.

** For a practical approach on how labor and management deal with the issue of technological development, see *The Practice Of Collective Bargaining* by Edwin F. Beal and Edward D. Wickersham (Richard D. Irwin, Inc. Humewood, Ill. 1959) Chapter 23 "Technological Change", pp. 595-622.

*** See "The Social Utility Of Collective Bargaining" by John F. Dunlop, pp. 168-180 in *Chalenges To Collective Bargaining* (Prentice-Hall Englewood Cliffs, NJ 1967).

(1956). The test imposed by the Board in this case precludes any activity from being found to be work preservative. It should be rejected not only in the interest of legal correctness but for social and economic reasons as well.

Nor should the Board be permitted legally to redefine the work in controversy (and so control the result) on a case-by-case basis. Not only would such discretion lend itself to arbitrary and capricious abuse by an administrative agency, but it would also selectively undercut the rulings of this Court and the will of Congress. *National Woodwork, supra.* The whim of the NLRB would subject parties not only to the invalidation of their duly negotiated contracts, but also to serious pecuniary liabiltiy, as attested by the private litigation already engendered by the Rules on Containers.* The results would become so confused and unpredictable as to make effective collective bargaining negotiations impossible, in direct contravention of the purpose of the NLRA.

This Court has found in the very existence of the NLRB itself the specific intent of Congress that national labor policy be uniformly applied. *San Diego Building Trades Council, Millmen's Union, Local 2020, Building Material and Dump Drivers, Local 36* v. *Garmon,* 359 US 236, 242 (1959); *Garner* v. *Teamsters, Chauffeurs and Helpers Local Union No. 776,* 346 US 485, 490 (1953). That end would be frustrated if the Board is given free rein to change the ground rules in every case.

The affect of sustaining the Board's position would be to introduce chaos at the collective bargaining table. The Rules in the case at bar were consciously patterned on the basis of *National Woodwork* and refined and supplemented after initial vindication by the Board. Today they are challenged because of a reversal in the Board's posi-

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* Cf. *NLRB* v. *Bell Aerospace Co.,* 416 US 267, 295 (1974).

tion. Like respondents here, management and labor could never predict which way the Board will go in its selective definitions. The task of reconciling differences is difficult enough without the introduction of an unknown variable.

In short, to countenance what the Board has done would be to authorize a veto on the results of collective bargaining. Administrative *fiat* would replace the rule of law as the determinant in labor relations at the expense of collective bargaining in the private sector which is the cornerstone of our labor policy. *NLRB* v. *Sands Manufacturing Company,* 306 US 332 (1939).

To effectuate the intent of Congress, to preserve the integrity of its own prior decisions, and to secure for society the benefits of free collective bargaining, this Court should affirm the vacating of the Board's decisions.

CONCLUSION

The Judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1979

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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I.

Respondents argue that the Board has defined the work in controversy solely in terms of the off-pier work performed by consolidators and truckers after the advent of containerization, while disregarding the work performed by longshoremen at the pier prior to the advent of containerization (ILA Br. 18, 24;

NYSA Br. 19, 22, 27-29). This contention is based on a misconception of the Board's findings and a misunderstanding of the services performed by consolidators and truckers for their shipper customers.[1]

Respondents do not dispute that prior to containerization there was an "already established industry of freight forwarding" to which the "consolidation business * * * naturally gravitated" (ILA Br. 7-8). Nor do they disagree that this "already established industry" performed services for shippers not performed on the pier by ILA labor (NYSA Br. 39). However, they contend that the stuffing and stripping of containers was not part of the work of this established industry (ILA Br. 7; NYSA Br. 5-6, 15). "Prior to containerization, all the work of loading, unloading, sorting or otherwise handling ocean-borne cargo was performed exclusively by longshoremen at the piers" (NYSA Br. 29). They further assert that consolidators entered the market only as a result of a scheme

[1] Although respondents contend that the question before the Court is solely a question of "law" (ILA Br. 21-24; NYSA Br. 26-27), their legal contentions rest on a version of the facts that disagrees with the Board's findings concerning the work traditions of longshoremen, truckers and consolidators—findings relating to time periods both before and after containerization. See Board Br. 8-10, 13-18, 20-22. Moreover, this Court repeatedly has stated that the Board's inferences and conclusions, as well as its underlying factual findings, are entitled to judicial deference. See, *e.g.*, *American Broadcasting Companies* v. *Writers Guild of America*, 437 U.S. 411, 432-433 (1978).

to lower labor costs by "subcontracting" on-pier consolidation work (ILA Br. 7-8; NYSA Br. 5-6, 31).[2]

However, as shown in our opening brief (Br. 8-9 & n.4; see also Tidewater Br. 14-16), before the advent of containerization, consolidators, operating at their own inland terminals, combined the goods of various shippers destined for shipment on particular vessels and secured the delivery of those goods to the pier. From the first appearance of containers in the Port of New York in the 1940s until the enforcement of the Dublin Supplement in 1973 and 1974, consolidators have continued to perform this service, utilizing different sized containers in their traditional work of combining small shipments of goods received from their own customers (A. 117-118).[3] As the Board explained in *International Longshoremen's Association (Consolidated Express, Inc.) (Conex)*, 221 N.L.R.B. 956, 959-960 (1975): "for many years,

[2] The Board specifically rejected this subcontracting argument, finding that "[t]here is no evidence in the record to lend the slightest credence to these contentions" (Pet. App. 96a). The court of appeals did not disagree with that finding (Pet. App. 21a-22a).

[3] Containers did not come into existence for the first time when container ships appeared in the mid-1960s. Containers gradually evolved over three decades from small boxes, to lockers, to large receptacles specially designed for carriage in container ships. See *International Longshoremen's Association (Consolidated Express, Inc.) (Conex)*, 221 N.L.R.B. 956, 957, 959-960 (1975); *Humphrey* v. *International Longshoremen's Association*, 548 F.2d 494, 498-499 & n.16 (4th Cir. 1977). Such containers traditionally moved over the docks without stripping or stuffing by ILA labor, unless shippers or consignees requested pier-side handling of their cargo. *Ibid.*

maritime cargo has been sorted and consolidated off the docks by companies employing teamsters and unrepresented employees. With the advent of vessels designed exclusively to carry the large containers presently in use, these consolidating companies * * * have continued to consolidate shipments into containers * * * * * [U]ntil the enforcement of the Dublin Supplement in 1973 which gave rise to this proceeding, ILA has handled the containers of [the consolidators]. Thus, with few exceptions, ILA has loaded such containers without stripping and restuffing." See also Pet. App. 94a-95a.[4] Similarly, from the introduction of containers in the Ports of Baltimore and Hampton Roads in the mid-1960s, truckers have stripped FSL containers when they considered it necessary or expedient to do so (Board Br. 14-16; Tidewater Br. 14; A. 24-29, 45, 54, 74). As the Board found (Pet. App. 164a) (ALJ finding adopted by the Board): "the history of the longshoremen's work tradition in Baltimore and Hampton Roads shows that their role in handling break-bulk import cargo ended at the head of the pier * * *. Thereafter, the fate of that cargo was the responsibility of the motor carrier, as set forth in the bill of lading. The advent of containerization in the ports of Baltimore and Hampton Roads did not change the traditional role of the ILA longshoremen

[4] Intervenor Dolphin points out that one of the first off-pier consolidators in New York (its predecessor company) offered regular container services in 1949 (Dolphin Br. 8); see also *Balicer* v. *International Longshoremen's Ass'n*, 364 F. Supp. 205, 220-221 (D. N.J. 1973). ILA labor did not interfere with Dolphin's containers until 1974 (A. 586-587).

* * * with very rare exceptions, motor carriers have freely picked up the steamship company's containers * * * and have stripped the shippers' loads from them * * * using truck terminal employees, whenever considerations of state regulation, safety, or economy persuaded a motor carrier to take that precaution." [5]

Under these circumstances, the Board reasonably found that the Rules on Containers and the Dublin Supplement constitute a boycott to take away work that other employees and employers have traditionally performed. This is not work preservation: to the contrary, it is an aggrandizement of the work opportunities of longshoremen at the expense of other persons at inland facilities with established work traditions of their own.

[5] NYSA's assertion (NYSA Br. 15-16; see also ILA Br. 11-13) that it has been the "unequivocal and consistent interpretation by both labor and management in the longshore industry that the Rules prohibited shortstopping of FSL containers at local warehouses or trucking terminals" is contradicted by the record. Prior to the 1968 collective agreements with the Hampton Roads and Baltimore Shipping Associations (HRSA and STA), truckers routinely shortstopped FSL loads. Thereafter, the ILA asserted that the Rules precluded that practice. At a meeting of the HRSA negotiating committee and representatives of the ILA held in 1969 (A. 421-439), several employer representatives replied that the Rules did not preclude stripping of FSL containers at terminals and warehouses (A. 424, 429-432). Moreover, despite the fact that truckers routinely stripped FSL containers, only a handful of complaints involving the stripping of FSL containers were filed with the STA-ILA Joint Container Committee during the period between September 1969 and November 1974 (Pet. App. 152a-153a). As late as 1974, members of the STA still denied that shortstopping FSL cargo could be construed to be a violation of the Rules (A. 92-94).

II.

Respondents also contend that containers are merely parts of the hold of a ship (ILA Br. 8, 29-30), and that it is immaterial to shippers whether containers are stripped or stuffed at the dock or at inland terminals of consolidators or truckers (ILA Br. 31-32, 37). They contend that cargo handling within 50 miles of the docks cannot benefit shippers and does not contribute to efficiency. These contentions, however, ignore the fact that many shippers deliberately select local cargo handlers to serve their special transportation needs. And they do so for good reason.

Containerization obviates the need for on-pier handling of cargo with its substantial risk of damage, misrouting and theft.[6] Equally important, containerization allows the freight forwarder or consolidator to control the movement of cargo and to expedite its delivery (see Board Br. 35-36). As the Federal

[6] As noted by Intervenor Dolphin (Dolphin Br. 7), reduction of pilferage and damage in on-pier cargo handling is one of the primary purposes of containerization and has been cited uniformly as one of its greatest advantages. Indeed, the affidavit of NYSA's vice president (A. 595-625) notes that, after World War II, steamship lines first acquired containers "for highly pilferable, fragile and hazardous cargoes" (A. 602). Twin Express (one of the trucking companies that complained to the Board in *Conex*) found that ILA handling of its cargoes triggered "a great proliferation of [damage and loss] claims both in number and dollar size." *Balicer* v. *Longshoremen*, 86 L.R.R.M. 2559, 2562 (D. N.J. April 19, 1974). See also *Balicer* v. *Longshoremen*, *supra*, 364 F. Supp. at 219-220.

Maritime Commission study cited in our opening brief (*id.* at 6) explains, "[o]ne of the most important benefits of the NVOCC service is one of coordination and control of the traffic. For example, a cargo may take three to four weeks to travel from Chicago to Mayaquez via separate carriers but with close coordination, the NVOCC can achieve a seven day delivery." This advantage of NVOCC service is lost if consolidators must take their cargoes to the piers to be loaded piecemeal into containers (see A. 35). The consolidator then loses control over the loading of the container and cannot assure a timely departure. Moreover, on incoming shipments, the consolidator or trucker seeking to pick up cargo must wait at the pier for the cargo to be unloaded from the container by ILA labor. This has resulted in very substantial delays.[7]

[7] In a prior proceeding involving Twin Express, Judge Lacey found that:

> A random sample of Sea-Land documents revealed a great increase in delay in sailing after [ILA] stripping commenced in February 1973 resulting from the additional 20-24 man-hours needed to strip and stuff a container. Prior to February 1973 * * * containers seldom experienced delay in sailing, whereas such delay after February was a daily occurrence.

Balicer v. *Longshoremen*, *supra*, 86 L.R.R.M. at 2562. Judge Lacey also found that handling of the cargo at destination was seriously compromised by prior ILA stuffing at the pier because the "sequential loading arrangement to accommodate delivery by the truckmen at the place of destination" was "disarranged" in the process (*ibid.*).

Similarly, during the period that FSL containers were stripped at the pier by longshoremen at Hampton Roads,

In sum, there is no merit to ILA's argument that inland cargo handling within a 50 mile radius of the docks confers no significant advantages on shippers. Shippers would not opt for inland cargo handling if that were the case (see note 9, *infra*). The terminals of consolidators may be situated only an hour away from the pier, but the significance to the shipper lies in the very fact that they *are away* from the pier. This increases the ability of consolidators and truckers to expedite the movement of cargo and decreases the danger of loss, theft, and damage to the cargo.

Finally, if, as ILA contends, containers are merely extensions of the hold of the ship,[8] there would be nothing to preclude the union from amending the Rules to claim the work of stuffing and stripping containers even beyond the 50 mile radius (see Board Br. 53-54). This would further invade the separate market historically served by consolidators and truckers. We note that this is not a hypothetical concern, since the ILA interprets the Rules to forbid stripping

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there were "delays of five to eight days in the movement of container cargo" (Pet. App. 159a; A. 82, 205). Stripping at the pier also caused "much additional pilferage to the goods" (A. 205). Indeed, the employer members of the STA-ILA Joint Container Committee complained that "pilferage on Far East Traffic was terrific" (A. 422).

[8] Perhaps containers could properly be viewed as parts of the ship's hold when goods are brought to the pier in loose form for loading by longshoremen and are similarly to be unloaded in loose form at the destination pier. However, containers are also integral elements in land transportation and packaging. Containers are trailers, usually on wheels, that are fitted for trucks. They are specifically designed so that they can be loaded and unloaded away from the ship.

of FSL containers by truckers anywhere following pickup by truckers at the docks (A. 41, 92-93, 227-228, 18).[9]

III.

Respondents argue (NYSA Br. 35-39; ILA Br. 35-43) that the steamship companies have the right to control the work at issue because "the containers are the property of the steamship carriers who have full right, dominion and control over their disposition" (NYSA Br. 36). Respondents assert that the Rules on Containers are merely a mechanism by which the employers can control the work performed with their own property. Respondent NYSA (NYSA Br. 37 n.37) adds that the Rules have no application to "containers that are not the property of the [longshoremen's] employers."

a. The record directly refutes the latter contention. The Rules specifically apply to "[c]ontainers owned, leased or *used* by carriers" (Board Br. App. 3a, Rule 1(a)(1)) (emphasis added).[10] Indeed, San

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[9] Respondent NYSA refers (NYSA Br. 9) to cargo consolidated within 50 miles of the pier as "local cargo." It may be local in the sense that it is containerized locally. However, the consolidators who operate within the 50 mile radius solicit and handle cargo from a wide geographic area. Thus, San Juan's regional manager testified that the cargo it handled came from "[a]ll over the states * * * [it had] freight coming from Massachusetts, Chicago, Wisconsin, Ohio, New York, New Jersey, Connecticut, Maryland, South Carolina, North Carolina, Florida, Georgia, from all these points" (A. 535).

[10] *New York Shipping Ass'n* v. *ILA, Local 791*, 41 Lab. Arb. 809 (1963), cited by respondent NYSA (NYSA Br. 37 n.37), is not relevant here. That arbitration award construed the 1959 agreement which predated the Rules on Containers. The

Juan's regional manager testified that when he leased "foreign" containers owned by third parties at the suggestion of the shipping company and brought them loaded to the pier, "[t]hey were off-loaded by ILA members and loaded into PRMMI containers" (A. 533). See *Conex, supra*, 221 N.L.R.B. at 959, 960 ("even these trailers were stripped and stuffed by ILA labor at the piers"). In other words, even if consolidators used "foreign" containers to bring their cargo to the pier, their cargo would be stripped by ILA labor and stuffed into a container belonging to the shipping company. Dolphin's operating manager also testified that Dolphin could not operate in the Port of New York without obtaining containers provided by the shipping companies (A. 487).[11]

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arbitrator found that the 1959 agreement had no application to containers not owned by the employer, but noted that the parties could change the scope of the agreement in future negotiations. *Id.* at 810. That is precisely what they did.

[11] Respondent NYSA (NYSA Br. 13) argues that the shipping companies never refused to supply containers to Dolphin and San Juan—they merely required the consolidators to "truck their LCL cargo to the piers where it would be loaded into [the] containers by * * * longshore workers * * *." As we have shown, however, this requirement effectively precluded the consolidators from carrying on their business (see pages 6-8, *supra;* see also Board Br. 50-52). Similarly, while it is true (NYSA Br. 13 n.16) that Dolphin ceased doing business in the Port of New York because it would be cheaper to route its cargo through Jacksonville, the reason it was too expensive for Dolphin to operate in New York was because ILA insisted on rehandling Dolphin's cargo at the pier (A. 498-499). This activity had as its natural consequence a cessation of business relations or a substantial change in the method of doing business (see Board Br. 30-32 & n.21). There can be no doubt, moreover, that the Rules expressly require a cessation of business relations. Rule 1(e) provides that "[n]o carrier or direct employer shall supply its containers to any consolidator or deconsolidator." Likewise, Rule 7(d) provides that "[a]ny facility operated in violation of the Container Rules will not have service supplied to it by any direct employer." See Board Br. App. 4a, 8a. Respondents enforced these rules according to their literal terms by imposing a boycott (Board Br. 12-13, 18-19).

b. In any event, as pointed out in our main brief (Board Br. 46 n.31; see also Tidewater Br. 57-67), ownership of the containers does not vest the steamship companies with the legal right to deny their services to shippers on a discriminatory basis.[12] The notion that steamship companies may grant or withhold containers and carriage on their ships as they see fit is totally inconsistent with the common carrier obligations of such companies. See Section 16 of the Shipping Act of 1916, 46 U.S.C. 815 (forbidding any common carrier by water, "directly or indirectly," to subject "any particular person * * * or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever * * *"). See also Section 14 Fourth of the Act, 46 U.S.C. 812 Fourth (prohibiting discrimination in providing "cargo space accommodations or other facilities"); Section 17 of the Act, 46 U.S.C. 816 (requiring common carriers to observe "just and rea-

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[12] The issue here is not whether the steamship companies have the right to refuse to lease containers. The carriers do lease containers. They do so, however, on a discriminatory basis.

sonable regulations and practices relating to the "receiving" or "handling" of cargo); Section 18(a) of the Act, 46 U.S.C. 817(a) (requiring reasonable practices and charges in relation to packing, delivering and transporting cargo). These provisions forbid a common carrier to discriminate among shipper-customers or to cut off services that traditionally have been provided to customers if they are prepared to tender their goods and pay the charge prescribed by tariff. See *Grace Line, Inc.* v. *Federal Maritime Board*, 280 F.2d 790, 792-793 (2d Cir. 1960), cert. denied, 364 U.S. 933 (1961); *Swayne & Hoyt, Ltd.* v. *United States*, 300 U.S. 297, 303 (1937). Applying the literal terms of the Shipping Act, the Federal Maritime Commission has determined that the Rules on Containers violate the statute insofar as they require shipping companies to deny containers to shippers who use consolidators operating within 50 miles of the docks. See *Sea-Land Service, Inc., and Gulf Puerto Rico Lines* (No. 73-17) and *Puerto Rico Maritime Shipping Authority—Proposed ILA Rules On Containers* (No. 74-40), 16 S.R.R. (Pike & Fisher) 315, aff'd, 18 S.R.R. 553 (F.M.C. June 14, 1978), review pending, No. 78-1176 (D.C. Cir.).[13]

[13] The suggestion of ILA (ILA Br. 38) that this Court should not consider the views of the FMC in Nos. 73-17 and 74-40 because judicial review is still pending are without merit. Those decisions simply apply the literal text of the Shipping Act to the Rules on Containers. The decisions represent the views of the expert agency in this area and are in accordance with the judicial authorities cited above. Moreover, whether or not the Rules on Containers must be filed with and approved by the FMC under Section 15 of the Shipping Act, 46 U.S.C. 814 (a provision which applies to several categories of anticompetitive agreements), the FMC is empowered to determine in an appropriate proceeding that the Rules violate the specific prohibitions contained in Sections 14, 16, 17 or 18 of the Act. See *FMC* v. *Pacific Maritime Association*, 435 U.S. 40, 68, 77 (Powell, J., dissenting on other grounds). See also FMC rulemaking release, Docket No. 78-11 (General Order 44) at 15-16 (Apr. 10, 1980).

See also *Consolidated Express, Inc.* v. *Sea-Land Service, Inc.*, No. 73-27 (Mar. 26, 1976), 16 S.R.R. (Pike and Fisher) 817; *South Atlantic and Caribbean Line, Inc.*, 12 F.M.C. 237, 239-241 (1969).

Contrary to respondents' assertions (NYSA Br. 36 n.36; ILA Br. 39-40), the situation here is not comparable to that in *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612 (1967). In that case, the union sought to preserve traditional work for its members. Here, in contrast, the union is seeking to enlarge its work opportunities by taking for itself jobs that traditionally have been performed by others. Moreover, in *National Woodwork*, the employer had unilateral control over the selection of building materials for the job in question and could award the work in controversy without infringing the rights of any third party. In the present case, the steamship companies did not have unilateral control over the work in controversy. That work previously had been awarded to consolidators and truckers by shippers. As common carriers, the employer steamship companies could not use discriminatory measures to frustrate business relations between shippers and the consolidators and truckers which they retained. In this respect, the present case is comparable to *NLRB* v. *Enterprise Association of*

Pipefitters, 429 U.S. 507 (1977). There, the general contractor was contractually bound to use equipment manufactured by the boycotted company and the union and subcontractor could not override that obligation. Similarly, the employer-steamship companies here involved are required by law to make their services available to all shippers without discrimination. They are not legally entitled to use boycotts or economic sanctions against their shipper-customers in order to obtain the work in controversy for the union.

CONCLUSION

For the foregoing reasons and the reasons stated in our opening brief, the decision of the court of appeals should be reversed.

Respectfully submitted.

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In the Supreme Court of the United States

October Term, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

TIDEWATER MOTOR TRUCK ASSOCIATION, HOUFF TRANSFER, INC., and DOLPHIN FORWARDING, INC.,
Respondents,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, and COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, et al.,
Respondents.

REPLY BRIEF OF RESPONDENT TIDEWATER MOTOR TRUCK ASSOCIATION

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REPLY BRIEF OF RESPONDENT TIDEWATER MOTOR TRUCK ASSOCIATION

I. The Control Test Is Properly Before the Court.

The NYSA/CONASA Brief erroneously states that "[f]or the first time in the lengthy litigation involving the Rules on Containers the right of control test is invoked by the Board . . . The Board now seeks to rewrite its decisions in this case by retrospectively inserting a right of control analysis." (NYSA/CONASA Brief pp. 35-36). The ILA states that "[t]he Board has never before addressed this issue, much less found an absence of control." (ILA Brief p. 19). However, these parties stop short of explicitly asserting that the issue of the sea carriers' lack of control

over the use of containers by NVOCC's, consolidators, and trucking companies is not properly before this Court. There really can be no doubt that the control factor has been considered at every level of this litigation in determining the true unlawful secondary objective of the Rules. In his Decision and Recommended Order, adopted by the Board, Administrative Law Judge Wagman made repeated reference to the motor carriers' complete control of containers in their possession. (Bd. Petition pp. 149a-152a, 164a-165a). The Board stated in its Decision in *Associated Transport* that the administrative law judge's reliance upon the "'complete control' language of the full equipment interchange agreements" (Bd. Petition p. 165a) was among the criteria upon which he "correctly relied . . . in finding the violations in this proceeding." (Bd. Petition p. 115a). The right of control issue was briefed to the Court of Appeals by all parties. (*See* ILA Brief pp. 31-34; CONASA Brief p. 39, n. 29; Bd. Brief pp. 21, n. 12, 26-27; ILA Reply Brief pp. 4-6; CONASA Reply Brief pp. 17-21). NYSA and CONASA admit that both the Board and the Court of Appeals considered this issue (NYSA/CONASA Brief pp. 35-36), and it clearly passed on the issue on its merits. (Bd. Petition pp. 55a-57a).

The Board did not rest its decision principally upon the control factor, because it found that the work in controversy was not traditional longshore work. The question of who has the right to control the work does not become a determinative factor unless it is found that the disputed work was traditional work of the union claiming it. *NLRB v. Enterprise Association of Pipefitters*, 429 U.S. 507 (1977). The control issue has taken on more importance because of the decision of the Court of Appeals that the Rules protect traditional ILA work. Therefore, in light of its decision in *Enterprise* and the record of the proceedings, this Court is not precluded from considering the importance

of control. *Bingham v. United States*, 296 U.S. 211, 218-219 (1935); *Pennsylvania v. Brown*, 373 F.2d 771, 777 (3rd Cir. 1967).

II. The Rules Apply to All Containers Regardless of Ownership.

In attempting to show the Rules have no secondary objective the ILA, CONASA and NYSA assert that the ILA does not claim the right to stuff and strip containers that are not the property of the sea carriers, and that this fact makes some legal difference. (NYSA/CONASA Brief p. 37; ILA Brief p. 29). The sea carriers blithely state that an arbitral principle established in 1963, requiring that containers owned by other than sea carrier employers are to be moved without restriction or stripping on the pier, is "now part of the industry's labor relations code." (CONASA/NYSA Brief p. 37, n. 37). Nevertheless these parties continue to apply the Rules to *all* containers regardless of ownership, and it is just happenstance that the fines levied against Associated and Houff involved containers owned by the sea carriers.

The preamble of the latest version of the Rules negotiated in 1975 states that the Rules on Containers "covers all container work at a waterfront facility . . ." (Bd. Brief p. 1a). The scope of Rule 1(a)(1) covers: "Containers owned, leased or *used by carriers* . . ." regardless of ownership. (Bd. Petition p. 69a, Emphasis added). Since the 1963 arbitration decision the ILA has enforced the clear language of the Rules against consolidators who attempted to use "foreign" containers which the sea carriers did not own and which did not carry the sea carriers' names. In *Consolidated Express, Inc.* the Board found that the ILA insisted that "even these [foreign] containers were stripped and restuffed by ILA labor at the piers." 221 N.L.R.B. at 959. Similarly, in *International Longshore-*

men's Ass'n (*Shipside Packing Co., Inc.*), 227 N.L.R.B. 659 (1976), the ILA refused to handle containers not owned by sea carriers and stuffed at off-pier facilities.

Petitioners contend that ownership of containers does not give the sea carriers the legal power to control their stripping and stuffing, the work at issue. (TMTA Brief pp. 54-64). Nevertheless, the continued enforcement of the Rules against the containers not "owned" by the sea carriers belies the ILA's assertion that the enforcement of the Rules is legitimately grounded on whatever control ownership gives the sea carriers. The secondary objective is proved by the very breadth of the Rules and their enforcement.

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INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR AMERICAN TRUCKING ASSOCIATIONS, INC. AS AMICUS CURIAE

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---

BRIEF FOR AMERICAN TRUCKING ASSOCIATIONS, INC. AS AMICUS CURIAE

Certiorari was granted on January 21, 1980 and an expedited briefing schedule was established. This brief is filed by American Trucking Associations, Inc. (ATA), the national organization of the motor carrier industry, on behalf of all carriers regulated by the Interstate Commerce Commission which participate in the intermodal transportation of containerized freight for export or import. The concerns of these motor carriers lie at the heart of the dispute at bar and therefore may be helpful to this Court in resolving the important questions presented by this litigation. ATA has received

written consent to submit this brief as amicus curiae from all parties before the court of appeals. Copies of these consents are on file with the Clerk.

QUESTION PRESENTED

Whether the court of appeals erred in finding that the National Labor Relations Board improperly interpreted and applied the Supreme Court's work preservation doctrine by merely substituting its judgment for the Board's as to "all surrounding circumstances" which must be considered, including consideration of work patterns developed within the motor carrier industry for interchanging containerized freight with the ocean shipping industry.

STATEMENT

At issue are contract provisions negotiated by the International Longshoremen's Association (ILA) with their employers in the steamship industry. Under these provisions, steamship companies or associations are obligated to pay a fine as liquidated damages on each container that is "stripped" or "stuffed" off-pier, within 50 miles of the center of relevant ports, by anyone other than ILA employees.[1]

Parallel to the ILA work on-pier, the motor freight industry traditionally performed substantial off-pier cargo sorting in conjunction with transportation of interchanged freight for their customers and cargo consolidators, as well as for shipping companies. Since containerization, that work now involves stripping and stuffing containers. These operations are now deemed by

[1] The current Rules on Containers, in effect since 1974, clarify that stripping and stuffing—packing and unpacking cargo into and from individual containers—is permitted off-pier by employees of the cargo's beneficial owner. The entire rules are printed as Appendix B to the court of appeals' decision, contained in the appendix to the Solicitor General's petition (hereafter "Pet. App."). Pet. App. 67a-79a.

ILA to conflict with their asserted right to such work under the Rules on Containers.[2]

Consequently, shipping companies assessed fines because of off-pier container work not performed by ILA employees have sought reimbursement from motor carriers. Carriers generally have refused to pay these indirect penalties, inasmuch as they are guaranteed complete control and supervision of containers in their possession under the Uniform Intermodal Interchange Agreement.[3] Additionally, the standard bill of lading utilized in the trucking industry specifies that carriers have the right to transfer cargo among containers and trailers as necessitated by business judgment or as required by the freight's owner. Nevertheless, steamship companies have responded to unpaid assessments or threats of further assessments by ILA by cancelling interchange agreements with these motor carriers, thereby precluding affected trucking firms from doing any more business with those shipping companies.

In one of the cases considered by the court of appeals, individual motor carriers challenged just such practices as outlined above, with respect to stripping container traffic within 50 miles of the ports of Baltimore and Hampton Roads, Virginia.[4] Responding to their charges,

[2] At different times since the advent of rules prescribing handling of containers, ILA has allowed certain work to be conducted by others in conformance with the rules. The complicated history of various ILA claims and rules as set forth in great detail by the court of appeals is basically accurate. Pet. App. 6a-22a.

[3] This agreement, governing the relationship between individual signatories from the motor carrier and shipping industries, provides in part I (4.1(a)) that subscriber carriers using interchanged equipment "shall have the right of complete control and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same condition as received, normal wear and tear excepted."

[4] While the controversy involving these ports focused on stripping and stuffing "full shippers' load" containers destined beyond the

a majority of the National Labor Relations Board (NLRB) affirmed the rulings, findings, and conclusions of its Administrative Law Judge (ALJ), that the penalty provisions of the Rules on Containers and their enforcement by the ILA constituted an illegal secondary boycott, not permitted as merely furthering the preservation of their traditional work. Pet. App. 110a-118a.

Specifically, the ALJ found that "the traditional on-pier work of longshoremen has not included the work performed by the employees of motor carriers * * * at their off-pier facilities." Pet. App. 165a. The record developed before the ALJ (Pet. App. 139a-141a) conclusively demonstrated that, both before and after the advent of containerization, the longshoremen's role in packing and unpacking cargo ended at the head of the pier, while motor carriers were responsible for any such handling of the freight beyond that point. Pet. App. 164a. Critical to his determination on this issue, the ALJ found that, since containerization, motor carriers traditionally have transported containers to their terminals and utilized their own employees to transfer freight to truck trailers "whenever considerations of safe regulation, safety, or economy persuaded a motor carrier to take that precaution." Pet. App. 164a.

The court of appeals, by divided vote, reversed and vacated the Board's decisions, while remanding them to the NLRB for further proceedings. Pet. App. 1a. Chief Judge Wright, writing for the majority, found that "the NLRB committed reversible legal error by ignoring circumstances crucial to a responsible application of the Supreme Court's work preservation doctrine," enunciated

50-mile radius, the motor carrier industry's concerns over the ILA provisions include handling freight belonging to more than one consignee consolidated in a single container. Therefore, this brief is not limited to a discussion of the practical difficulties arising out of Nos. 77-1735 and 77-1758, reviewing *International Longshoremen's Ass'n*, 231 N.L.R.B. 351 (1977).

in *National Woodwork Manufacturers Ass'n* v. *NLRB*, 386 U.S. 612 (1967) and *NLRB* v. *Enterprise Ass'n of Pipefitters*, 429 U.S. 507 (1977). Pet. App. 50a. While contending that it has "no dispute with the Board's factual findings" (Pet. App. 59a), the court nevertheless faulted the Board's proper consideration of "all the surrounding circumstances." Pet. App. 45a-51a. Instead of accepting the Board's findings of fact, the majority found that the Board's reliance on the practical needs of trucking companies, which led to the pattern of stripping containers off-pier before transporting interchanged freight, was "immaterial." Pet. App. 49a.[5]

Subsequently, the court of appeals denied petitions for rehearing and suggestions for rehearing *en banc*, although four judges would have granted rehearing *en banc*. Pet. App. 88a.

ARGUMENT

The Court of Appeals Merely Substituted Its Judgment for the NLRB's In Determining All the Surrounding Circumstances Which Must Be Considered, Including Relevant Traditional Work Patterns, Under the Work Preservation Doctrine

While the basis asserted by the court of appeals for the decision under review is the NLRB's failure to interpret and apply properly the prevailing Supreme Court cases, the motor carrier industry takes strong issue with that conclusion. Indeed, we submit that close analysis of the court's opinion exposes a diametrically opposite reason

[5] The dissenting judge found that the NLRB had given proper consideration to the surrounding circumstances, including the relevant traditional work patterns. Pet. App. 79a-83a. His conclusion was based on the existence of substantial evidence in the NLRB's records, and was "fortified" by decisions in three other circuits adopting the same view of the ILA's work preservation claims, in addition to the D.C. Circuit's own *per curiam* enforcement of a similar NLRB order.

for its decision. The majority simply favors a contrary policy than that reflected in the Board's assessment of the totality of the circumstances surrounding the legality of the ILA's work rules for handling containerized cargo.[6] It is hornbook law that a reviewing court is not empowered to substitute its judgment for that of the agency. *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285 (1974).

In an effort to substitute what amounts to its policy judgment despite numerous contrary NLRB and court determinations, the majority resorts to a charade. While charging that the NLRB has failed to examine "all the surrounding circumstances" under *National Woodwork* and *Pipefitters*, in the same breath the court found that practical concerns of the motor carrier industry for economical and safe transportation of interchange freight are "immaterial" to defining the disputed work. Pet. App. 49a n. 173. In our view, "all the surrounding circumstances" means just that, not merely those factors which favor the ILA's claims to the work in controversy. Confronted by its own recognition (Pet. App. 57a) that reviewing courts are bound to uphold NLRB decision supported by substantial evidence, *Pipefitters*, 429 U.S. at 530-31, and the substantial evidence which exists on the record demonstrating the traditional work pattern in the motor carrier industry, *supra*, at 3-4, the majority cannot invalidate the Board's action on that ground.[7] As

[6] Evidence of this policy preference is found not only in the majority's slanted conclusion (Pet. App. 59a-61a), but also is stamped on its determination that these work rules are a "reasonable" attempt to deal with "an extremely thorny industrial issue: technological innovation versus job security." Pet. App. 50a, 53a-54a. Apparently the fact that off-pier stripping and stuffing by motor carrier employees, often represented by the International Brotherhood of Teamsters, grew up in parallel to the same work performed on-pier by ILA employees constitutes for the majority an "out of sight, out of mind" issue.

[7] Indeed, we note that an agency's determination would not be subject to reversal even if the administrative record might support conflicting conclusions. *Consolo* v. *FMC*, 383 U.S. 607, 620 (1966). As far as we know, ILA has not argued that this evidence produces arguably conflicting conclusions.

a result, the court is left to play its word game with this Court's legal test.

In spite of the court of appeals' strained effort to find that the NLRB's decisions rest on "erroneous legal foundations" (Pet. App. 59a), the motor carrier industry contends that the NLRB has properly considered the totality of the circumstances. This is particularly so with respect to the Board's examination of the reasons for the development of motor carrier work patterns on interchange freight. To the extent that the court is correct in arguing that containerization merely represents a change of equipment (Pet. App. 49a), that change has impacted as equally on motor carrier operations as it has on ILA practices.

In 1979 an estimated 30 million containers were interchanged in the United States, approximately half of them with motor carriers. The most recent container tonnage figures available show that in 1977 nearly 47.8 million metric tons of cargo were imported and exported through American ports, including San Juan, Honolulu, and Anchorage.[8] Clearly, these figures establish the magnitude of containerization and adequately suggest the important role of the intermodal system to the U.S. trade picture. In view of the increased trade deficit of $4.76 billion reported for January 1980 by the Commerce Department, which includes the cost of freight, the motor carrier industry believes that encouragement and facilitation of intermodalism is more important than ever. As intermodal interchange stands today, however, the sig-

[8] Exports and imports each account for roughly half of this tonnage, although the import figure is partially due to the fact that San Juan, Honolulu, and Anchorage are essentially domestic ports. The economies of Puerto Rico, Hawaii, and Alaska to a lesser extent, then, are largely dependent on water carrier service, much of which is container operations.

nificant economic and safety problems for the motor carrier industry alluded to earlier already act as inhibitors to free interchange. We submit that these problems could only be magnified or intensified by application of the court of appeals' decision.

The preponderance of container equipment in use today is compromised of either 20 or 40 foot long containers. Containers basically are metal boxes with thick, reinforced walls and floors, which produces a low cubic measurement and a high tare weight. Additionally, weight ratings for loading 20 foot containers run up to 49,000 pounds, while the maximum weight is 68,000 pounds for 40 foot containers.[9] In contrast, while the state of the art in the motor carrier industry is 45 foot trailers, the majority of trailers in use provide at least 40 linear feet of cargo space. Several critical problems stem from the physical size disparity which has grown up between containers, owned or leased by the shipping industry, and motor carrier trailers. Taken together, these factors result in an effective bar to the transportation of containers in most situations beyond a short movement to the carriers' terminals.[10]

At the outset, the obvious economic factor for motor carriers is the large amount of capacity (cubic footage) excess their trailers possess over containers. One 45 foot trailer contains approximately the same cubic measurement as three 20 foot containers. A 40 foot container may have about 30 percent less cube than the average

[9] International standards on container design dictate strength, size and capacity, which result in the limited internal cubic space and high tare weight. American National Standards Institute, Standard MH 5.1M-1979.

[10] A detailed explanation of the drawbacks of operating intermodal containers in domestic environments is found in a report by Richard A. Staley, *Intermodal, International Containerization—The Problem Areas,* published in the proceedings of the James W. Bennett, Jr. Memorial Seminar on "World Logistics: Key to World Trade," University of Tennessee, October 1978.

highway trailer. In a business where capacity often translates into revenues, carriers generally refuse to transport containers on chasis, except for short distances under 100 miles to their terminals for stripping, rather than be placed at a competitive disadvantage.

Both economic and safety problems arise from the twofold effect of container weights—tare and gross. Due to the relatively high tare weight of containers, plus the heavy chasis weight, carriers find it uneconomical to use this equipment over the road in place of their own trailers.

In order to remain within legal state weight limits for highways, carriers tendered containers on chasis must sacrifice as much as 3,000 pounds or more per movement, which most are unwilling to do. Furthermore, import freight loaded overseas usually utilizes, or even exceeds, the full international weight rating of the containers. When carriers are tendered these containers to transport, either as single 40 foot units or as two 20 foot containers on a chasis, there is no way to avoid exceeding state maximum weight laws without stripping the containers and utilizing trailers.[11]

Besides these physical constraints presented by containers, motor carriers encounter equally burdensome operational difficulties in transporting containers. For many motor carriers, interchange freight represents important traffic for balancing movements within their transportation systems, because the availability of both import and export traffic solves any natural imbalances which may exist. Nevertheless, as indicated previously, many carriers are reluctant to transport containers great distances from the port. Practical carrier operations help

[11] It should be clear from this discussion that carriers transporting containers on chasis create unnecessary fuel inefficiencies by essentially carrying less freight than can be moved in trailers with virtually no different expenditure of fuel.

to account for this result, as well as the economics of trailer capacity.

While carriers can handle containers to points they serve directly without losing control of the equipment, obviously they lose that control if interline or connecting carriers are used to serving secondary points. This can be an expensive problem for the trucking industry. Shipping company per diem charges, which now range from $8 to $40 per day on each container, accrue for a longer period and are the interchange carriers' responsibility.

But more onerous are the U.S. Customs regulations governing containers, particularly the limitation of one free loaded domestic movement allowed the motor carrier in order to reposition the container for its next export move. As discussed above, containers make extremely bad trailers, thus carriers find it difficult to utilize efficiently containers in their own operations. However, the potentially greater problem flows from the current non-uniform interpretations of this rule within the Customs Service. Carriers found to violate this rule can face a variety of fines and penalties, in addition to becoming subject to ad valorem and excise taxes on the containers. Existence of these risks lead most carriers to minimize their use of containers. By limiting movements to those between their terminals and the port, and utilizing their own employees to strip and stuff containers, carriers return the equipment quickly to the shipping company, achieve fuel and operational efficiency, and eliminate per diem charges and potential fines for container use.

Even as Congress is today considering new legislation for motor carrier regulation which would ostensibly improve the fuel efficiency of motor transportation and increase its level of productivity to the American economy, the court of appeals' decision would deprive the industry of those very advantages. Given the physical and operational constraints on motor carrier transportation of

cargo containers themselves, described above, it is fair to say that the present intermodal freight system would not survive if the court's decision is allowed to stand. Motor carriers participating in container traffic already have discovered that economy and safety factors dictate that containers not move great distances. Imposition of the ILA's fine system would severely handicap present carrier operations to the point where most transportation would cease.

This court inferentially recognized in *Pipefitters*, 429 U.S. at 524 n. 12, that the effective foreclosure of competing groups was properly a surrounding circumstances to be considered by the NCRB.[12] The motor carrier industry submits that such a foreclosure will take place if ILA employees are allowed to secure work not traditionally performed by them under the court of appeals' decision.

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[12] Again, we must stress that the court of appeals' ignored the existence of a rival bargaining unit, the Teamsters, whose parallel work pattern off-pier, along with other motor carrier employees, is jeopardized by the instant decision. Contrary to the court's view (Pet. App. 49a n. 173) all motor carrier work cannot practicably be transferred back to the pier. Container piers are land-intensive operations, and do not presently as a general matter involve sufficient "terminal" space to permit ILA employees to strip and stuff every containers handled today by motor carriers. The alternative, that motor carriers should hire ILA employees to perform off-pier work, is untenable for the obvious conflict it represents.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, et al,
Respondents

AMICUS CURIAE BRIEF OF INTERNATIONAL ASSOCIATION OF NVOCCS IN SUPPORT OF PETITIONER

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AMICUS CURIAE BRIEF OF INTERNATIONAL ASSOCIATION OF NVOCCS IN SUPPORT OF PETITIONER

QUESTION PRESENTED

Whether the Court below correctly denied enforcement of the decision of the NLRB that Respondents violated Section 8(b)(4) and 8(e) of the National Labor Relations Act by agreeing to and implementing the so-called Rules on Containers that sought to acquire the long established work of off-pier consolidators.

INTEREST OF THE ASSOCIATION

The International Association of Non-Vessel Operating Common Carriers (hereinafter the "Associa-

tion") is a trade association whose members are freight consolidating non-vessel operating common carriers ("NVOCCs") in ocean transportation, regulated by the Federal Maritime Commission (FMC) under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended (46 USC 801 *et seq.*). The NVOCCs, like Dolphin Forwarding, Inc. and San Juan Freight Forwarders in this case, receive from their customers shipments known in the trade as "less than container load" (LCL) or "less than trailer load" (LTL) shipments which they consolidate into large containers for transportation to ocean-going vessels. Functioning as independent carriers, NVOCCs provide the public with freight transportation, a portion of which moves over water, and assume responsibility for such transportation, although they do not own or control the vessels. *Ulmann* v. *Porto Rican Express,* 3 FMB 771 (1952). There are approximately 400 NVOCCs having tariffs on file at the FMC.

The Association's interest in this case is apparent and vital—the very existence of many NVOCC operations are at stake. Indeed, under the guise of the "work preservation" of the so-called Rules on Containers, Respondents International Longshoremen's Association (ILA), New York Shipping Association (NYSA) and Council of North Atlantic Shipping Association (Conasa) seek to eliminate the many NVOCC freight consolidators who operate within a 50-mile radius of the ports—a radius that includes a large majority of NVOCC operations. In question here is whether Respondents may use the Rules on Containers to eliminate NVOCCs whose employees are not represented by ILA and force their work to the piers to be acquired by ILA represented companies.

NVOCCs perform an essential and valuable service to the public. By coordinating, assembling and consolidating shipments in sealed containers for the LCL or LTL shipper,[1] the NVOCC reduces loss and damage, pilferage, as well as congestion and delay at the piers.[2] By also preparing the documentation, routing and tracing shipments and performing transfer services, the NVOCC in effect becomes the export marketing and traffic management arm of the LCL or LTL shipper. These functions make it possible for many shippers to participate in the export trade of the United States on a competitive "delivered price" basis overseas. In these circumstances, the extinction[3] of the NVOCCs located within 50 miles of the port imposes obvious injury to the companies involved, contravenes the public interest, and serves only the

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[1] "Shipper" is used only to describe those who seek the services of carriers to transport the "shipper's" cargo—the term "shipper" is not used to describe the vessel operator or ocean line carrier.

[2] In a recent FMC decision, it was found that the off pier consolidation of LCL cargo reduces pilferage and damage to cargo and that a prime impetus for the development of containerization was reduction of damage and pilferage and the ability of containership operators to load full containers on their ships rapidly. *Agreement 10294—Cancellation of Consolidation Allowances To Off-Pier NVOCC Consolidators,* FMC Docket 77-23, Initial Decision (Dec. 13, 1979). 19 SRR 1113, 1136 and 1148. (Presently on Exceptions before the FMC.)

[3] Extinction is the manifest result of the decision below. Under the Rules on Containers, the NVOCCs are boycotted from receiving the containers for stuffing and stripping. Without containers, the operations must cease. Moreover, under the Rules on Containers, affected NVOCC's could not even *relocate* outside the 50 mile radius in order to continue operations. See Appendix A of the decision below. Section II Rules on Containers, C. Rules on No Avoidance or Evasion.

purposes of Respondents to acquire the work of NVOCCs.[4]

DECISION BELOW

Contrary to the uniform position of three other circuits, the court below failed to find substantial evidence for the NLRB's conclusion that the Rules on Containers violated Section 8(b)(4) and 8(e) of the Act. Instead, the court adopted a "tunnel vision" method for analyzing a work preservation issue. It emphasized almost exclusively the history of longshoremen and excluded the parallel work traditions of off pier consolidators. Since ILA had done some stuffing and stripping of containers, the Rules on Containers were considered work preservation. The court ruled that the NLRB had impermissibly focused on the work done by the off pier consolidators rather than rely just on the work performed by longshoremen.

The court's position lacks a logical or legal basis. In *National Woodwork Manufacturers Ass'n* v. *NLRB, supra,* the test for considering work preservation issues included an inquiry into all the "surrounding circumstances." The circumstances necessarily include the nature of the work which the subject bargaining unit is purporting to preserve for itself and the economic effect of the boycott on other employers and employees in the industry. The existence of an independent and parallel competing labor tradition, which tradition stands to be destroyed by the boycott activity,

[4] The economic impact on the NVOCCs as well as the public interest served by these organizations are factors appropriately considered as "the surrounding circumstances" under the National Woodwork tests. *National Woodworking Mfrs. Ass'n.* v. *NLRB,* 386 U.S. 612 (1967).

has an obvious impact on the determination of whether a bargaining unit is pursuing illegal work acquisition.

To examine only the work done by the longshoremen, as suggested by the court below, and to conclude that they may acquire work similar to that which they perform on the docks, is to ignore the long standing work tradition of off-pier workers. The Board properly considered the parellel off pier work traditions. In short, it was the court below, and not the Board, that misapplied the applicable legal standards.

CONEX DECISION

All parties agree that the decision below directly conflicts with the decisions in three other circuits.[5] Of particular importance are the *Conex* proceedings leading up to *ILA* v. *NLRB,* 537 F.2d 706 (2d Cir. 1976) *cert. denied* 429 U.S. 1041 (rehearing denied 430 U.S. 911 (1977)). The decision of the NLRB here, denied enforcement by the court below, specifically relied upon the *Conex* precedent. Indeed, the Board stated that the decision in *Conex* was "controlling."[6] As noted by the Board, the "*Conex* case involved the identical Respondents and dealt with the same Rules

[5] *ILA* v. *NLRB,* 537 F.2d 706 (2d Cir. 1976), *cert. den.* 429 U.S. 1041, *rehear. den.* 430 U.S. 911 (1977); *ILA* v. *NLRB,* 460 F.2d 439 (1st Cir. 1977); *Humphrey* v. *ILA,* 548 F.2d 494 (4th Cir. 1977). The decision below also is contrary to the NLRB decision on container rules in *ILWU California Cartage Co.,* 208 NLRB 994 (1974) which was enforced by the U.S. Court of Appeals for D.C., 515 F.2d 1018 (1975) (Mem. Op.) *cert. den.* 424 U.S. 942 (1976).

[6] *ILA, NYSA and Dolphin et al.,* 236 NLRB No. 42 (1978) Mem. Op. p.5.

on Containers." *Supra,* note 6, Mem. Op. p.5. The charging parties in *Conex* were, like Dolphin and San Juan, NVOCC consolidating companies engaged in off pier stripping and stuffing of containers. The Board stated that in *Conex*:

> We held that the Rules were not valid work preservation clauses and that traditionally the off pier stuffing and stripping of containers was performed by consolidating companies and not longshoremen. Since the work was not traditional longshore work and had never been performed by longshoremen, the Rules which require that the shipping companies stop doing business with consolidators did not have a lawful work preservation object. . . . No legal distinction can be drawn between Conex and this case and the few factual differences are without legal significance. *Supra,* note 6, Mem. Op. p.5.

Moreover, the decision of the Board in the instant case specifically referred to the comprehensive discussion of containerization, consolidation, NYSA and ILA bargaining history and the resulting Rules on Containers detailed in the Board's *Conex* decision. The court below does not attempt to distinguish *Conex* but simply reaches a conclusion contrary to the Board and the Second Circuit. In these circumstances, it is instructive to review the description in *Conex* of the off pier work traditions which are directly applicable to the instant case.

The labor jurisdiction of longshoremen has historically been defined in terms of location—namely, the docks. Longshoremen's work involves principally the loading and unloading of ships and other incidental functions performed *at the docks.* By contrast, the history of consolidation and containerization of freight

has, from the beginning, involved a significant *off dock* work tradition by teamsters and other non-ILA labor.[7]

From the earliest years of consolidation, the truckmen rather than the longshoremen were primarily responsible for sorting and consolidating maritime cargo. For example, truckmen would collect shipments for particular ports and deliver them to the appropriate pier.[8] As soon as boxes or containers were introduced, consolidators with non-ILA labor performed off-pier stuffing and stripping without ILA interference. In the mid-1950's, new types of vessels, specifically designed to carry large containers, were introduced by maritime common carriers. As much as 20 to 40 feet long, these containers were, in effect, over-the-road truck trailers. They could be placed directly on tractor and chassis rigs as an actual part of the truck, driven on and off the docks, and delivered to inland consignees with no further handling. Thus, the cargo which the new container vessels carried, the entity upon which the carrier's cargo rates were based, was the container itself.[9]

In the earliest stages of containerization, Respondent NYSA recognized the tradition of consolidating containers off the docks. Indeed, tariffs filed with the

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[7] *Balicer* v. *ILA*, 364 F. Supp. 205, 208 (D.C.N.J. 1973); *ILA and Consolidated Express*, 221 NLRB 956, 959, 960 (1975); *ILA* v. *NLRB*, 537 F.2d 706, 712 (2d Cir. 1976), *cert. den.* 429 U.S. 1041, *rehear. den.* 430 U.S. 911 (1977); *Balicer* v. *ILA*, 86 LRRM 2559, 2561, 2562 (D.C.N.J. 1974).

[8] *See* Investigation of Practices, Operations, Actions, and Agreements of Ocean Freight Forwarders, 6 FMC 327, 334-35 (1961).

[9] *See* from public records of FMC Pan Atlantic's July 16, 1958 tariff attached as Addendum A.

Federal Maritime Commission by NYSA members show that consolidation off pier was *mandatory* in order to qualify for the tariff rate under which consolidated containers have been and are shipped—namely, Freight-All-Kinds.[10]

In short, as the history in the *Conex* case establishes, off-pier consolidation of freight is, and always has been, the business of NVOCCs. The consolidation of shipments off pier by non-ILA labor has a history long antedating the recent era of containerization. Moreover, from the very advent of containers, which today are essentially the trailers or vans of trucks, off pier consolidators have been and continue to be involved in the work of consolidating, stuffing and stripping. It is not until recently that Respondents by agreement and enforcement of the Rules on Containers sought to acquire this work from the off pier consolidators. In light of this history, it is beyond question that the practices of Respondents were tactically calculated to benefit the ILA generally and sought to acquire work that had not been traditionally the work of the ILA.

ANALYSIS OF THE WORK IN CONTROVERSY BY THE COURT BELOW

The court below claims that the Board erred in defining the "work in controversy" and attributes to the Board the following error:

> Rather than define a category of work based on work patterns both prior and subsequent to the

[10] *See* Note 9 above. Especially notes 1, 5 and 9 of Pan Atlantic's tariff. The limitation on liability established under Note 9 was acceptable to the shipper-consolidator because the containers were sealed and not subject to rehandling, loss, or pilferage.

> innovation, the Board has defined the work in controversy specifically in terms of the innovation. Thus, by definition, removing any opportunity for pre-innovation workers to preserve their work. (p. 40, D.C. Circuit Opinion.)

The court's criticism is without justification. In this case, *Conex,* and other decisions, the Board fully explored the respective work traditions both on and off the pier prior to and after the innovation of containerization. Indeed, in examining the work patterns both prior to and subsequent to containerization, the Board in *Conex* stated that

> ". . . for many years, maritime cargo has been sorted and consolidated off the docks by companies employing teamsters and unrepresented employees. *With the advent of vessels designed exclusively* to carry the large containers presently in use, these consolidating companies such as Consolidated and Twin, have *continued* to consolidate shipments into containers prior to their placement aboard the vessels." (*Conex, supra,* 221 NLRB 956, 959-960) (Emphasis added).

Containerization is the use of large "boxes" or trailers or containers, currently 20′, 35′ and 40′ long, to transport cargo from door to door (without rehandling of the cargo within the container). Historically, the filling or stuffing of these containers occurred both *on pier and off pier.* When *on pier* such stuffing of boxes or containers is done by ILA labor; however, when *off pier,* it is done at warehouses of truckers, NVOCC-consolidators, and other shippers by non-ILA labor. (*Conex, supra,* 221 NLRB 956, 959-960; 537 F.2d at 712).

Prior to modern day containerization, there was no 50 mile geographical demarcation for ILA jurisdiction. The only line drawn was on pier and off pier. All cargo coming *on the pier,* whether crated or loose, was loaded aboard the vessel by ILA labor. If loose cargo needed to be boxed or stuffed into a container, *on pier,* ILA labor did the work. If the cargo arrived from *any* distance from the pier already boxed or containerized, the cargo was loaded aboard the vessel in its boxed or containerized form—the boxing or containerizing of cargo *off pier* was not ILA's work.[11]

No evidence has been presented or suggested that, prior to containerization (the "innovation"), the ILA boxed or crated or consolidated *all* shipments within the 50 mile radius. On the contrary, as the Board found, off pier consolidators had a history of sorting and consolidating maritime cargo off the docks by companies employing non-ILA labor, whether into 8 foot or 16 foot or smaller boxes or containers, prior to the innovation. With the advent of containerization these consolidating companies have *continued* to consolidate shipments into the large 20′ and 40′ present day containers and trailers which in the container revolution are hoisted directly on new specialized container ships.

[11] In the earliest beginnings of the innovation of containerization, the ILA explicitly recognized non-ILA labor jurisdiction over off-pier trailer containers when in 1955, Thomas W. Gleason, current President of the ILA, stated, referring to the impending construction of the new specialized container vessels and the use of "over-the-road bodies" to be loaded directly on board the "new steamers", that "The International Longshoremen are not interested too much in that because that belongs to the International Brotherhood of Teamsters." Hearings on H.R. 5734 before the House Committee on Merchant Marine and Fisheries, 84th Congress, 1st Session, p. 835.

The Board recognized and considered this independent work tradition of off pier consolidators. It is the court below, and not the Board, that failed properly to define and evaluate the work in containerization.

RIGHT OF CONTROL ISSUE

The court below also sought to apply the right of control test for delineating primary activity as established in *NLRB* v. *Enterprise Association of Pipefitters,* 429 U.S. 507 (1977). The court concluded that control over the containers by the ocean carriers established beyond question the control necessary to meet the *Pipefitters* test. The Court's analysis is erroneous in a number of respects. First of all, the right of control should focus on the shipper or customer. It is the shipper who is to decide whether the goods should be handled by a consolidator or go directly to the pier. The ocean carrier has no control over that decision. More importantly, the court erred in its assumed but unproven fact that the ocean liners so control the containers that they may refuse to provide containers to consolidators. The law does not provide ocean carriers such discretion.

In fact, ocean carriers have *no discretion* as to treating all shippers equally and without discrimination (Sections 14 and 16 of Shipping Act.) (46 USC 813 and 815) The NVOCC is a shipper *vis-a-vis* the underlying ocean carrier.[12] Thus ocean common car-

[12] Consolidators utilizing transportation equipment of underlying common carriers have long been treated as shippers *vis-a-vis* the underlying carriers. *See Acme Fast Freight Inc. Common Carrier Appl.,* 17 MCC 549, 555 (1939) and the several Supreme Court cases cited therein. See also *Sea Land Services et al., Pro-*

riers who furnish containers to shipper customers, must furnish such containers and the services of containerized movement to *all* shippers, including NVOCC consolidators, equally and without discrimination.

> It is elemental and basic to the United States transportation law, that shippers all be treated equally, whether large or small, or whether they differ in their plants, warehouse facilities or in other respects, provided only that they are buying identical transportation services. *Sea-Land Services, Inc. and GPRL—Proposed Rules on Containers, etc., supra.* Note 12.

The history of the law in this area of common carrier obligations goes back to the earliest development of Anglo-Saxon law, many cases describing the duties as almost absolute and some cases even holding that the carrier must run the risk of incurring a strike rather than refuse to serve a blacklisted shipper. See e.g., *Possible Violations of Shipping Act,* 16 SRR 425, 438-439 (1975) and cases discussed therein. In fact, the ocean carriers do not have the legal authority to blacklist or boycott consolidators from receiving containers. Carriers cannot discriminate because the shipper is competing with the carrier or because of who really owns the goods or for other similar reasons.[13]

Thus, since the ocean carriers, here the contract employers of ILA labor, cannot (1) refuse to furnish

posed Rules on Containers, 18 SRR 553 (FMC 1978) adopting I.D. 16 SRR 315 (1975). This case is presently on appeal in the D.C. Circuit—*Conasa and NYSA* v. *FMC,* No. 78-1776.

[13] See *American Trucking* v. *Atchison, T.&S.F.R.R. Co.,* 387 U.S. 397, 408 (1966); *ICC* v. *Delaware L.&W.R.R.,* 220 U.S. 233, 252 (1911). Nor can carriers treat shippers differently because of circumstances arising before the service of the carrier begins or after it was terminated. *ICC* v. *Delaware,* above.

containers to all shippers alike, including NVOCC-consolidators; (2) cannot assign the work of stuffing the containers to ILA labor; (3) cannot control the labor employed by the shippers; or (4) control where the containers are stuffed, there is therefore a complete absence of the right to control the work sought by Respondent ILA here. *Pipefitters* mandates that the decision of the court below be reversed.

PROPER STANDARD OF REVIEW

As discussed above, the Court of Appeals, D.C., misapplied the principles of *National Woodworkers* and *Pipefitters.* Moreover, the Court "failed to adhere to the statutory standard under which [it] was obliged to review this case," *Pipefitters* at 531, which reversed the same Court of Appeals here for similar judicial overreaching.[14] In *Pipefitters,* the Supreme Court said

> the Board's reading and application of the statute involved in this case [§ 8(b)(4) of Labor-Management Relations Act], however, are long established, have remained undisturbed by Congress, and fall well within that category of situations in which the courts should defer to the agency's understanding of the statute which it administers, *Pipefitters* at 528.

Continuing, the Supreme Court said

> The statutory standard under which the Court of Appeals was obliged to review this case was not whether the Court of Appeals would have arrived at the same result as the Board did, but whether the Board's findings were supported by substan-

[14] *See also NLRB* v. *Weingarten,* 420 U.S. 251; *NLRB* v. *Ironworkers,* 434 U.S. 335; and *Beth Israel Hospital* v. *NLRB,* 437 U.S. 483.

tial evidence on the record considered as a whole. . . .'' It appears to us that in reweighing the facts and setting aside the Board's order, the Court of Appeals improperly substituted its own view of the facts for those of the Board. *Pipefitters, supra,* at 531, 532.

The record amply supports the Board's conclusions that the Rules on Containers were not valid work-preservation clauses and that the purpose of the Rules was to force or require employer members of NYSA to cease or refrain from handling, transporting or selling cargo space to consolidators who refused to use ILA labor to perform consolidation. The Court of Appeals failed to apply the statutory standard of review and improperly substituted its own view of the facts for those of the Board.

CONCLUSION

For all of the above reasons the judgment of the Court of Appeals should be reversed and the decision and order of the NLRB should be enforced.

Respectfully submitted,

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APPENDIX

APPENDIX

OFFICIAL FILE
PAN-ATLANTIC STEAMSHIP CORPORATION

OUTWARD
FREIGHT TARIFF No. 2

Original Page No. 119
FMB-F No. 3

SECTION 3 COMMODITY RATES (Continued)

FREIGHT, ALL KINDS (Except as noted), in mixed trailer loads, when loaded in carrier's trailers by shipper and unloaded from carrier's trailers by consignee, moving under a shipper's load and count bill of lading, subject to Notes 1, 2, 3, 4, 5, 6, 7, 8 and 9,

	In Cents Each
per trailer	80,000

Note 1: Freight must consist only of consolidated less than truck-load shipments, each of which individually weighs 15,000 pounds or less.

Note 2: Household goods, office furniture and fixtures, or personal effects included in a shipment, shall not exceed 10 per cent of the total weight or total cubic measurement (whichever is smaller) of the entire shipment.

Note 3: No freight may be included in shipments which is prohibited by law, or by the provisions of this tariff or Tariff FMB-F No. 4.

Note 4: Maximum weight loaded in any one trailer shall be 44,000 pounds.

Note 5: Subject to prior arrangements with the carrier, the following provisions will apply:

At Origin: Trailers shall be removed from the terminal of the carrier at Port Nework, N.J. by

the shipper for loading at shipper's expense and risk. Shipper shall assume full responsibility for the safety of trailers and chassis while in his possession, and for the safe return of trailers and chassis to said terminal in a clean and sound condition.

At Destination: Trailers shall be removed from the terminal of the carrier at San Juan, P.R., Ponce, P.R., or Mayaguez, P.R. (as billed) by the consignee for unloading at consignee's expense and risk. Consignee shall assume full responsibility for the safety of trailers and chassis while in his possession and for the safe return of trailers and chassis to said terminal in a clean and sound condition.

Each trailer removed from carrier's terminal will be furnished with chassis without additional charge by the carrier, but shipper and consignee shall furnish his own tractor.

Note 6: The per trailer charge will be made for each trailer removed from the carrier's terminal for loading, except that where more than one trailer is used, overflow freight loaded in the last trailer will be charged for at the rate applicable to the actual weight or measurement thereof (whichever is higher) subject to a maximum of 80000 cents for the last trailer. Shipper shall furnish weights and measurements on all packages loaded in the last vehicle otherwise the regular per trailer charge shall apply.

Note 7: Not applicable on refrigerated cargo or on cargo requiring controlled temperatures.

Note 8: Upon request, shipper shall furnish to carrier a manifest for each trailer loaded which shall show by individual shipments the commodity, the number of packages and the weights and dimensions of each such package.

Note 9: The carrier's liability will be limited to $500.00 per trailer where the per trailer charge is assessed. Bill of Lading will bear notation reading:

"Shipper hereby agrees that carrier's liability is limited to $500.00 with respect to the entire contents of each trailer, except when shipper declares a higher valuation and shall have paid additional freight on such declared valuation as provided in Item 1 of General Rules and Regulations."

ISSUED: July 16, 1958 EFFECTIVE: July 21, 1958

Issued by W. C. Farnell Jr., Traffic Manager
Foot of Doremus Avenue
Port Newark, N.J.

Supreme Court, U.S.
FILED
MAR 6 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.,
Respondents.

On a Writ of Certiorari to the United States Court of Appeals for The District of Columbia Circuit

BRIEF OF THE AIR CONDITIONING & REFRIGERATION INSTITUTE, AIR MOVEMENT AND CONTROL ASSOCIATION, INC., AMERICAN BOILER MANUFACTURERS ASSOCIATION, AMERICAN CONSULTING ENGINEERS COUNCIL, ARCHITECTURAL WOODWORK INSTITUTE, NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS, AND NATIONAL WOODWORK MANUFACTURERS ASSOCIATION, INC., AS AMICI CURIAE

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INTRODUCTION

This brief on behalf of the Air Conditioning & Refrigeration Institute, Air Movement and Control Association, Inc., American Boiler Manufacturers Association, American Consulting Engineers Council, Architectural Woodwork Institute, National Society of Professional Engineers, and the National Woodwork Manufacturers Association, Inc., as amici curiae, is filed pursuant to the written consent of the parties under Rule 42(2) of this Court. The amici herein support the position of the petitioner, the National Labor Relations Board.

INTEREST OF THE AMICI CURIAE

The associations participating in this brief have substantial and long-standing interest in the effective implementation of the statutory prohibitions against secondary boycotts, particularly when those boycotts are purportedly undertaken to "preserve" work for union members and have the effect of restricting the use of new technologies. The amici represent a broad cross-section of the construction industry, including designers, engineers, manufacturers and contractors. Members of the American Consulting Engineers Council (ACEC) and the National Society of Professional Engineers (NSPE) design, specify and provide engineering services on all types of construction projects and therefore have a major role in determining the materials, components and methods to be used in construction. Members of the American Boiler Manufacturers Association (ABMA), the Air Movement and Control Associaiton (AMCA), the Air Conditioning & Refrigeration Institute (ARI), the Architectural Woodwork Institute (AWI), and the National Woodwork Manufacturers Association (NWMA), manufacture materials and components used in construction throughout the United States.

The amici joining herein, therefore, have broad experience with the problems arising out of secondary boycotts effectuated through diverse union conduct. Moreover, they have participated individually, jointly and with other industry associations in numerous cases before the National Labor Relations Board ("the Board" or "NLRB") and the courts in which interpretation and application of the secondary boycott provisions of the National Labor Relations Act ("Labor Act" or "NLRA") were in issue.*

The cargo container rules at issue in this case are purportedly designed to protect longshoremen against the loss of work resulting from technological advances in the shipping industry. Rules such as these, however, often impair productivity by limiting cost-saving devices, including the use of prefabricated materials and other innovative and economical techniques which, in the case of the construction industry, are developed regularly by members of the amici. Accordingly, these amici have a strong interest in insuring that overly broad union "work preservation" practices in the shipping industry are declared un-

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* *See, e.g., NLRB* v. *Enterprise Ass'n, Pipefitters, Local 638*, 429 U.S. 507 (1977); *Connell Construction Co.* v. *Plumbers Local 100*, 421 U.S. 416 (1975); *National Woodwork Mfrs. Ass'n* v. *NLRB*, 386 U.S. 612 (1967); *Chamber of Commerce, et al.* v. *NLRB*, 574 F.2d 457 (9th Cir. 1978); *Allied Concrete, Inc.* v. *NLRB*, 102 L.R.R.M. 2508 (9th Cir.); *Muko* v. *Southwestern Pennsylvania Building and Construction and Trades Council, et al.*, 99 LRRM 2001 (3d Cir. 1978).

lawful, lest they lead to a judicially-sanctioned proliferation of such practices in the construction industry.

The potential impact of this case on the construction industry, and thus upon the way in which these amici develop methods, materials and components for use in construction, is clearly demonstrated by the opinion of the court of appeals below. In ruling that the cargo container rules were not unlawful, the District of Columbia Circuit relied upon this Court's "work preservation" doctrine as formulated and applied in *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612 (1967), and *NLRB* v. *Enterprise Association of Pipefitters*, 429 U.S. 407 (1977). Those cases, in which the amici participated, as a party in the former case and jointly as amici curiae in the latter, defined the lawful limits for construction industry agreements which proscribe the subcontracting of work to non-bargaining unit employees. In both cases, as well as in others, the amici have advocated effective implementation of the federal labor and antitrust laws to prevent unwarranted restrictions upon the use of competitive, efficient methods and materials in construction. Since we believe the court of appeals' decision in this case sets forth an erroneous application of Sections 8(e) and 8(b)(4)(B) which is likely to undermine this Court's work preservation and right-to-control doctrines as articulated in those cases, the interest of the amici in these review proceedings is clear.

SUMMARY OF ARGUMENT

1. In his opinion for the District of Columbia Circuit, Judge Wright asserts that the NLRB (and by implication, the courts which have upheld the Labor Board on this issue) have misinterpreted and misapplied the doctrine of work preservation by failing to consider "all the surrounding circumstances," particularly the "traditional work patterns" of longshoremen. Crucial to Judge Wright's rationale is his conceptual view of the proper approach to technological innovation, which colors the court's factual analysis of the work in controversy:

> When a technological innovation is introduced in the workplace, new work may be created and may initially be performed, as in these cases, by employees other than those who worked with the old technology. The crucial question is how best to rationalize the work that results from the innovation into traditional work patterns. Cert. Pet. at 47a.

From this "rationalization," the court of appeals found that the work in controversy must be defined "based on work patterns both prior and subsequent to the innovation." *Id.* In remanding the case to the Board with instructions to apply the court's "work preservation" concept, the court intimated that whenever technological changes result in the creation of new work which displaces some older method of operation, the employees who did the older work have a legitimate claim to the new operations unless the new work is so different from the old that it constitutes a clear break from the past.

As set forth more fully in the argument, the amici curiae joining in this brief submit that the circuit

court's interpretation and application of the Court's *National Woodwork* decision is contrary to the letter and to the logic of settled law. Since *National Woodwork*, it has been well-established that "work preservation" boycotts and agreements are permitted under Section 8(b)(4)(B) and 8(e), but those with "work acquisition" objectives are not. In accordance with that decision, the Board has looked to the work in controversy, "since that is the predicate upon which the issue of work preservation must turn". *ILA (Consolidated Express, Inc.)*, 221 N.L.R.B. 956, 959 (1975), *enf'd*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041, *reh'g denied*, 430 U.S. 911 (1977). As it has in a number of container-related cases previously, the Board has determined that the work in controversy as such is the container work being performed by the consolidators at their off-dock premises, and thus is not within the work traditionally performed by longshoremen of loading and unloading ships—an approach that has been endorsed by a number of circuit courts. *See, e.g., id.; ILA, Local 1575*, 226 N.L.R.B. 34 (1976), *enf'd*, 560 F.2d 439 (1st Cir. 1977); *Humphrey* v. *ILA*, 548 F.2d 494 (4th Cir. 1977).

The circuit court's standard for determining the legality of the container agreement mischaracterizes the entire dispute. By formulating the question involved in the case as one of "rationalizing" into "traditional work patterns" work resulting from technological innovation, the court prejudges the very issue in dispute by presuming that the new work necessarily fits within a previous work pattern of the affected industry. In fact, the evidence indicates that such is not the case. Rather, an analysis of the

work in controversy reveals that, as found by the ALJ, "the traditional on-pier work of longshoremen has not included the work performed by the employees of motor carriers . . . at their off-pier facilities." Cert. Pet. at 165a.

Since ILA workers traditionally have performed the stuffing and stripping required for the convenience of the shipping lines' customers but have not traditionally performed the stuffing and stripping performed by truckers and consolidators for their own shipper-customers, enforcement of the Rules of Containers sought to acquire "neither unit work nor fairly claimable . . . unit work." Cert. Pet. at 20, *citing Meat & Highway Drivers, Dockmen, Etc., Local 710* v. *NLRB*, 335 F.2d at 713). The circuit court's new formulation, however, *presumes* the stuffing and stripping performed by consolidators for their own customers historically belongs to the longshoremen, and thus seeks a compromise or "rationalization" on a point already conceded. Such an interpretation of *National Woodwork* would thwart the technological progress of the nation in favor of restrictive work rules before ever reaching the question of work acquisition.

2. The "right to control" test, as evolved, refined and currently applied by the Board, is of immense practical value in implementing the intent of Congress to eliminate secondary boycotts in the construction industry. In an inappropriate and out-of-context makeweight argument, the circuit court discusses the applicability of the construction industry "right to control" test, and finds that the primary employers in this case (the shippers) control the work in controversy in that they control "the disposition of all

the containers at issue." Cert. Pet. at 56a. However, since there is nothing in the record to indicate that those who contracted with the motor transport carrier to haul their freight to or from the docks made any specification regarding how, where, or by whom their goods were to be handled, there is no right to control issue present. As the government observes, "[r]efusal to supply containers was only a means chosen by the parties to the Rules on Containers to enforce them and, as such, was an inherent element in the secondary boycott itself; it did not evidence 'control' over the work in controversy." Cert. Pet. at 22.

3. The amici are particularly concerned with the policy implications of the circuit court's opinion. If the court's extremely broad approach to "work preservation" issues prevails, victims of product boycotts will be unable to overcome a "work preservation" defense unless, perhaps, the service or product being supplied is completely unlike that which has been used before. That new work has to be done at a different location (*e.g.*, in a factory rather than at the jobsite) or that it requires special equipment or special training, are seemingly eliminated as factors to be considered by the court in resolving product boycott disputes.

As with the cost-reducing benefits inherent in cargo container development, the use of prefabricated, prefinished and factory-assembled components in construction represents significant economic gains for the entire nation. Overly-broad protection of restrictive union work rules such as in the case here seriously undermines the secondary boycott prohibitions of the Labor Act, as well as fundamental tenets of antitrust policy, and thus thwarts national economic progress.

ARGUMENT

I. THE COURT OF APPEALS MISINTERPRETED AND MISAPPLIED THE "WORK PRESERVATION/WORK ACQUISITION" FORMULA, AND GAVE INSUFFICIENT WEIGHT TO THE BOARD'S RATIONALE, WHICH IS CONSISTENT WITH THIS COURT'S *NATIONAL WOODWORK* DECISION

A. The Board's Role and Approach in Determining Tests for Secondary Activity.

It is well settled that a violation of Sections 8(b)(4)(B) and 8(e) is dependent upon a finding of a secondary object. The problem lies in the method of identifying such object. Conduct directed at an employer with whom the union has a dispute is "primary" activity and lawful under the statute. Conduct directed at others is secondary and unlawful. *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612, 635 (1967); *Local 761, Electrical Workers (General Electric)* v. *NLRB*, 366 U.S. 672-673 (1961). Drawing the line between primary and secondary activity has not been easy and has, therefore, been marked by an evolutionary process. In the words of Justice Frankfurter:

> The nature of the problem, as revealed by unfolding variant situations, inevitably involves an evolutionary process for its rational response, not a quick, definite formula as a comprehensive answer. And so, it is not surprising that the Board has more or less felt its way during the fourteen years in which it has had to apply § 8(b)(4)(A), and has modified and reformed its standards on the basis of accumulating experience. 'One of the purposes which lead to the creation of such boards is to have decisions based

> upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration.' Republic Aviation Corp. v. Labor Board, 324 U.S. 793, 800. *Local 761, Electrical Workers (General Electric)* v. *NLRB*, 366 U.S. 667, 674 (1961).

The Board's decision in the present case is the natural result of this evolutionary process going on over a long period of time. Because a definite formula may not have been wise when the statute was first enacted, it does not follow that a clearly understandable rule cannot evolve after years of experience.

The Board has the initial responsibility for making determinations of secondary activity, and its efforts to draw appropriate lines and establish rules for doing so have been widely accepted in the past. *Local 761, Electrical Workers* v. *NLRB*, *supra*, 366 U.S. at 671-680; *Local 1976, United Bhd. of Carpenters, et al.* v. *NLRB*, 357 U.S. 93 (1958); *Houston Insulation Contractors' Ass'n* v. *NLRB*, 386 U.S. 664 (1967). Such rules express a "practical judgment on the effect of union conduct in the framework of actual labor disputes and what is necessary to preserve to the employer the freedom of choice that Congress has decreed. On such a matter the judgment of the Board must be given great weight, and we ought not to set against it our estimate of the relevant factors." *Local 1976, United Bhd. of Carpenters, et al.* v. *NLRB*, 357 U.S. 93, 107 (1958).

Over the course of the past decade, the Board has repeatedly evaluated the secondary impact of cargo-container rules in the maritime shipping industry. It has had occasion in a number of cases to evaluate

the "surrounding circumstances" of such alleged "work preservation" instruments, as required by this Court's decision in *National Woodwork*, 386 U.S. at 644, and has consistently rejected, as unlawful secondary activity, longshoremen's unions' efforts to acquire container-related work which was being performed by outside employers. See *ILA, Local 1575*, 226 N.R.L.B. 34 (1976), *enf'd*, 560 F.2d 439 (1st Cir. 1977); *ILA, Hampton Roads Dist. Council*, 225 N.L.R.B. 1066 (1976); *ILA, Local 1248 (Naval Supply Center)*, 195 N.L.R.B. 273 (1972); *ILUW, Local 13 (Cal. Cartage Co.)*, 208 N.L.R.B. 994 (1974), *enforced mem. sub nom. Pacific Maritime Ass'n* v. *NLRB*, 515 F.2d 1018 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 942 (1976); *ILA (v. Consolidated Express, Inc.)*, 221 N.L.R.B. 956 (1975), *enforced*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041, *reh'g denied*, 430 U.S. 911 (1977). *Cf., ILA, Local 1418 (New Orleans Steamship Ass'n)*, 235 N.L.R.B. 161, 167 (1978); *ILA, Local 1410 (Mobile Steamship Ass'n, Inc.)*, 235 N.L.R.B. 173, 178 (1978).

The *Consolidated Express* case is particularly instructive in demonstrating the Board's view of how cargo-container rules promote secondary objectives. After the Board acknowledged the longshoremen's claim that such rules were designed only to preserve work to which they were entitled, it cautioned that "if the ILA's real object was to obtain either work traditionally performed by employees not represented by ILA or work to which ILA had abandoned all claims, then the pressures on [the shippers] and the contractual arrangements would have a secondary object and would violate [the Act]." 221 N.L.R.B. at 959. The Board ruled that in order to evaluate prop-

erly the validity of the work claim, "it is essential to define with some precision *the work in controversy* since that is the predicate upon which the issue of work preservation must turn." *Id.* (emphasis added). It determined that the "work in controversy" was the container work being performed by the consolidators at their off-dock premises, and as such was distinguishable from the traditional work of longshoremen of loading and unloading ships. On review, the Court of Appeals for the Second Circuit affirmed the Board decision.

Applying its rationale in *Consolidated Express* to the facts here, the Board logically concluded that ILA's demands could be satisfied only "if the work traditionally performed off the pier by employees outside the longshoremen unit were taken over and performed at the pier by longshoremen represented by ILA," Cert. Pet. at 164a, *citing* 221 N.L.R.B. at 960, and that *the history of the longshoremen's work tradition* did not encompass such off-pier work. By looking to the work of the unit employees in terms not only of what they did, but where they performed their work and who they performed their work for, the Board utilized a logical and systematic method for determining the union's true objective in light of all the relevant surrounding circumstances.

B. Court Acceptance of the Board's Approach

This Court has not specifically ruled on the validity of the Board's approach to container rules, although it has had an opportunity to do so twice in the past and has declined. Interestingly, the Board's decisions in those cases declaring the container rules unlawful were enforced by the circuit courts, in one instance

by the very circuit court that now seeks to cast aside the Board's consistently applied evaluation. *ILWU, Local 13 (Cal. Cartage Co.)*, 208 N.L.R.B. 994 (1974), *enforced mem. sub. nom. Pacific Maritime Ass'n* v. *NLRB*, 515 F.2d 1018 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 942 (1976); *Consolidated Express, Inc.*, 221 N.L.R.B. 956 (1975), *enforced*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041, *reh'g denied*, 430 U.S. 911 (1977).

In addition to these decisions, opinions by both the First and the Fourth Circuits have endorsed the Board's approach as well. See *ILA, Local 1575* v. *NLRB*, 560 F.2d 439 (1st Cir. 1977); *Humphrey* v. *ILA*, 548 F.2d 494 (4th Cir. 1977).

In affirming the Board's emphasis upon "the work in controversy," and in finding such work to be the container loading and unloading performed by consolidators at their off-pier premises, the Second Circuit unequivocally declared the Board's approach to be "supported by substantial evidence and by sound analysis," *Consolidated Express*, 537 F.2d at 712. The First Circuit similarly found that "[t]he Board's definition of the work in question as the stripping and stuffing of vans consigned to freight consolidators is supported by substantial evidence and within its discretion." *ILA, Local 1575* v. *NLRB*, 560 F.2d at 447. "Once we accept this definition," the court declared, "we readily agree that the work in question was not traditionally done by the longshoremen." *Id.* The Fourth Circuit also expressed no doubt that the Board's approach was appropriate:

> [I]t would seem evident that the 'stripping' of these full shipper's loads by the truckers is not part of the process of loading and unloading the

> cargo of ships; rather it is done to facilitate and as part of the motor carrier's task of transporting the goods from the pier to the consignee. Consequently (and not surprisingly), this work has traditionally been performed by employees of the motor carrier. It follows that such 'stripping' does not fall within the bounds of the longshoremen's traditional role and that the challenged rules are unlawful 'work acquisition' measures .... (Footnotes and citations omitted.)

Humphrey v. *ILA*, 548 F.2d at 499.

Thus, the Board and numerous courts that have considered the question have found that "work preservation" agreements, lawful under *National Woodwork*, do not embrace union efforts to obtain assignments which are not currently held by the membership, and which, in fact, are being performed by other employees for a different employer and at a different location. As we shall demonstrate below, by emphasizing what it perceives as the similarity in the nature of the work involved, the court of appeals' adoption of a "rationalizing" test abandons these cases, and with them, fundamental principles for distinguishing between primary and secondary activity.

C. The Court of Appeals' Approach to *National Woodwork* Is Without Merit

The majority of the court below expresses the belief that the Board's focus on the work in controversy without an analysis of traditional work patterns misses the primary-secondary distinction in *National Woodwork*. The majority opinion views the distinction as requiring an analysis of how best to "rationalize" work resulting from technological in-

novation into traditional work patterns. This reasoning, however, ignores the critical Board finding, consistent with "work preservation" principles, that traditional work patterns must be evaluated in terms of the situs, as well as the nature of the work involved. The Board thus adopted the ALJ's findings that:

> The advent of containerization in the ports of Baltimore and Hampton Roads did not change the traditional role of the ILA longshoremen. The motor carriers have treated import shippers' loads destined for consignees located more than 50 miles from the center of the port of entry much as they did break-bulk cargo. For, with very rare exceptions, motor carriers have freely picked up the steamship company's containers mounted on wheeled trailers and hauled them to the consignee in accordance with the bills of lading. The motor carriers have also traditionally hauled such containers to their own truck terminals and have stripped the shippers' loads from them and are loaded into their own trailers, using truck terminal employees, whenever considerations of safe regulation, safety, or economy persuaded a motor carrier to take that precaution. (Emphasis supplied) Cert. Pet. at 164a.

Given the traditional work patterns of the maritime shipping industry, the ALJ appropriately concluded that "the traditional on-pier work of longshoremen has not included the work performed by the employees of motor carriers . . . at their off-pier facilities." Cert. Pet. at 165a.

Basic to the court's misinterpretation of *National Woodwork* is its misconception of the Labor Act's role in addressing labor disputes that emanate from technological progress. The court's "rationalizing"

test fails to recognize that the Labor Act protects those who introduce technological change, along with their employees, if such change incorporates new kinds of materials or methods at a different location. By insisting that all innovative work methods be evaluated along traditional work patterns regardless of changes in industrial and commercial technique, the court would freeze job tasks at a historical point and engage in a procrustean exercise to match novel work methods with older work skills. The court's open-ended approach to "work preservation" thus would emasculate the secondary boycott prohibitions in the Labor Act, which were designed, in part, to prohibit such economically deleterious protectionism. *Cf.*, II Legislative History of the Labor Management Reporting and Disclosure Act of 1959, 1431 (Sen. Kennedy); 1598 (Rep. Griffin).

II. THE COURT OF APPEALS' RELIANCE ON THE RIGHT TO CONTROL DOCTRINE IS MISPLACED AND, IF UPHELD, WOULD SERIOUSLY IMPAIR THE SECONDARY BOYCOTT PROSCRIPTIONS OF THE ACT

Congress recognized in 1947, when it included secondary boycott restrictions in the Taft-Hartley amendments, and again in 1959, when it amended those restrictions, that economic efficiency depends, in large measure, on the elimination of product boycotts. The right to control doctrine, as applied in current Board decisions, offers an effective method to implement Congressional efforts to eliminate secondary boycotts in the construction industry. A critical ingredient in right to control, of course, is defining the work in dispute. In this regard, the court below errs.

The court of appeals finds that the primary employers in this case (the shippers) control the work in controversy in that they control "the disposition of all the containers at issue." Cert. Pet. at 56a. It is not the containers, however, that are in dispute. The dispute centers around the stuffing and stripping of those containers, which are performed by truckers and consolidators for their own shipper-customers. Those who contract with the motor carrier to haul their freight to or from the docks do not specify how, where, or by whom their goods are to be handled. Consequently, there is no right to control issue present. Indeed, as the government observes, "[r]efusal to supply containers was only a means chosen by the parties to the Rules on Containers to enforce them and, as such, was an inherent element in the secondary boycott itself. . . ." Cert. Pet. at 22.

The Court of Appeals for the District of Columbia Circuit has in the past criticized at length the right to control doctrine. See *Local 636, United Association Contractors Ass'n of Detroit*, 430 F.2d 906, 908-11 (D.C. Cir. 1970), and *Local 742, United Bhd. of Carpenters (J.L. Simmons Co.)* v. *NLRB*, 444 F.2d 895, 899-903 (D.C. Cir. 1971), *cert. denied*, 404 U.S. 986; *Enterprise Ass'n of Pipefitters* v. *NLRB*, 521 F.2d 885, 901-03 (1975). It now has grossly misapplied that doctrine to a situation where the issue does not even arise. We therefore urge this Court to reiterate the principles it established in *NLRB* v. *Enterprise Ass'n of Pipefitters*, 429 U.S. 507 (1977), and thus reduce the possibility of further confusion in the application of the right to control doctrine.

III. THE COURT OF APPEALS IMPROPERLY IGNORED THE PRACTICAL EFFECT OF THE RULE ON CONTAINERS, WHICH IS TO RESTRAIN COMPETITION BASED UPON TECHNOLOGY AND EFFICIENCY OF OPERATION, AS WELL AS COMPETITION BASED UPON LABOR RATES

The court of appeals' approach to "work preservation" in this case, if upheld, would foreclose victims of product boycotts from overcoming a "work preservation" defense under practically all circumstances, unless, perhaps, the service or product being supplied is completely unlike that which has been used before. In applying the concept of "traditional work patterns" in a straitjacket fashion, the court would seemingly eliminate factors such as the need to perform work at a different location (*e.g.*, in a factory rather than at the jobsite) in evaluating product boycott disputes.

The broad policy implications of the circuit court's opinion are disconcerting. Not only would the court's analysis lead to a probable reduction, if not elimination of the cost-reducing efficiencies inherent in cargo container development, but its analysis could be applied to the detriment of other forms of innovative and economical techniques that have resulted from technological breakthroughs. Thus, in the construction industry, in particular, the use of prefabricated, prefinished and factory-assembled components represents significant economic gains for the entire nation. Yet, under the circuit court's overly-broad protection of restrictive union work rules, the secondary boycott prohibitions of the Labor Act, which are designed in part to facilitate technological progress, would be thwarted. Equally important, but unrecognized in the circuit court's opinion, would be the conflict with the antitrust laws engendered by its analysis.

Implicit in any rejection of the Board's limitations on secondary product boycotts is their relationship with the antitrust laws. When an employer and a union agree that the employer will refuse to handle a particular product, specified for a job or purchased by the user or another employer, it thereby precludes use of the product by the third party. This is precisely the type of union-employer combination found to violate the antitrust laws in *Allen Bradley* v *IBEW, Local 3*, 325 U.S. 797 (1945), and the reason that the Court, in *National Woodwork*, was careful to point out that it was expressing no view upon the antitrust limitations on work preservation or extension agreements. 386 U.S. 612, 631, n.19.

Since then, however, the relationship between the Labor Act's secondary boycott proscriptions and the role of the antitrust laws has been examined and explicated in the course of litigation, specifically with respect to cargo container rules. Thus, in *Consolidated Express* v. *New York Shipping Ass'n*, 602 F.2d 494 (3d Cir. 1979), suit was brought against the parties to the unlawful agreements (*i.e.*, the container rules) under Section 303 of the Taft-Hartley Act and under antitrust laws. In district court, plaintiffs asked for summary judgment on the issue of liability because of the NLRB finding, enforced by the Second Circuit, that the container rules violated the Taft-Hartley Act. The district court denied summary judgment, but on appeal, the Third Circuit held that the district court was wrong: where a secondary boycott finding by the NLRB has been made

final via enforcement proceedings, the injured party is not required to prove liability again in a suit for damages. Rather, the Board's finding is controlling in the Section 303 suit on both factual and legal issues, and the only issue for the district court is the amount of damages. As to the antitrust claims, the Third Circuit held that as victims of an illegal secondary boycott, plaintiffs are entitled to injunctive relief and a declaratory judgment under the Sherman Act. Also, they may recover treble damages under the Clayton Act unless the defendants can establish, under the court's three-step test, that they could not reasonably have foreseen, when they negotiated the container work rules, that the rules would be declared illegal.

By ignoring the antitrust implications of its decision, the court below overlooked the teachings of this Court's opinions in *Connell Construction Co., Inc.* v. *Plumbers and Steamfitters Local Union No. 100*, 421 U.S. 616 (1975), and *Meat Cutters* v. *Jewel Tea Co.*, 381 U.S. 676 (1965), which underscored the need to evaluate secondary-objective issues in terms of their anticompetitive effects. By diluting the effectiveness of the Board's remedies against product boycotts, the court below (apparently unknowingly) undercut antitrust policy as well by introducing a standard that may insulate container work rules even though their anticompetitive effects be "undisputed," "significant," "uncontested," and "[not] justified by their advancement of legitimate labor goals." *Consolidated Express*, 602 F.2d at 518.

CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed as prayed for in the petition of the National Labor Relations Board.

Respectfully submitted,

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